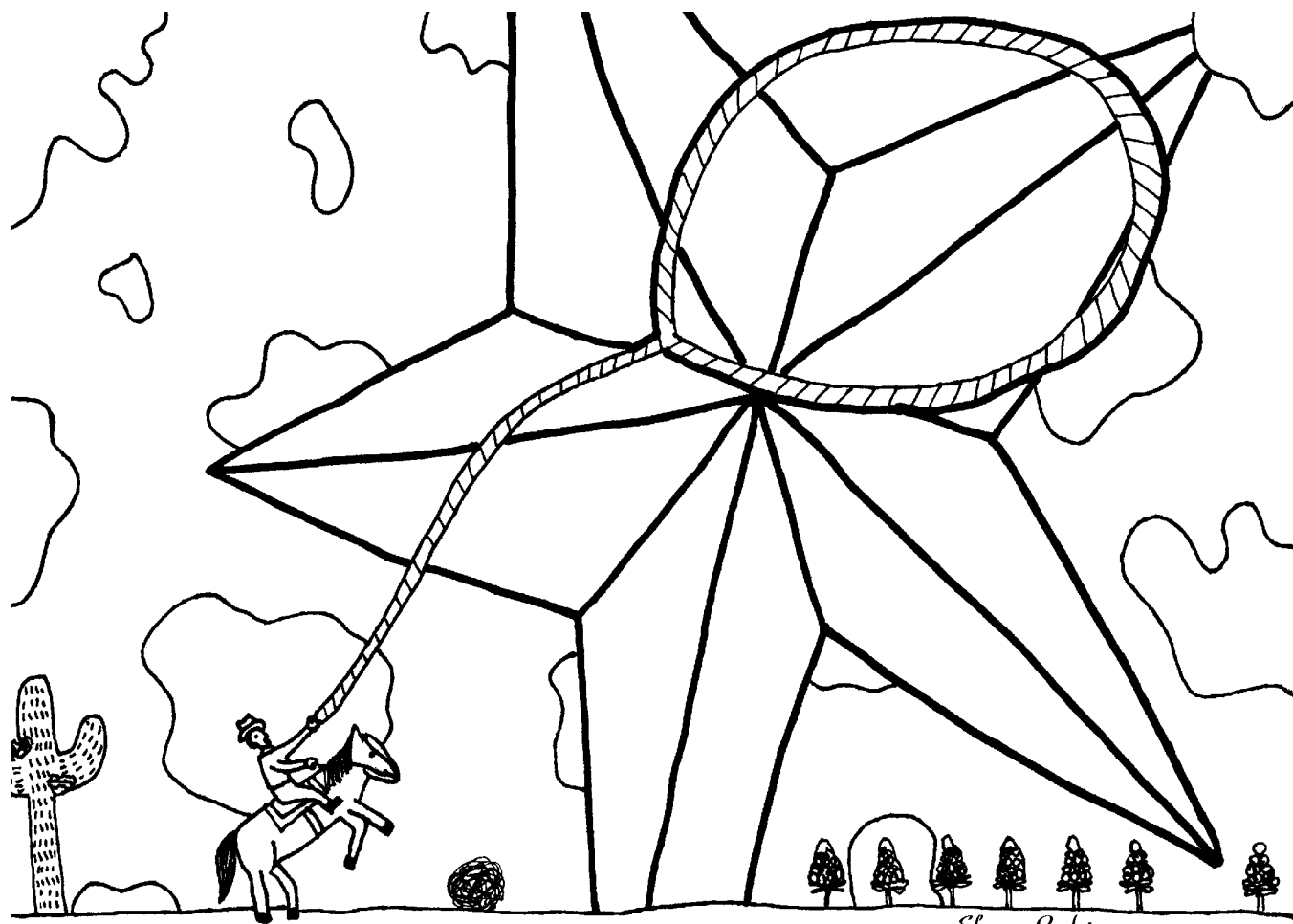

TEXAS REGISTER

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

ATTORNEY GENERAL

Request for Opinions5997

EMERGENCY RULES

STATE SECURITIES BOARD

FORMS

7 TAC §133.235999

EXEMPTIONS BY RULE OR ORDER

7 TAC §139.235999

TEXAS DEPARTMENT OF LICENSING AND REGULATION

BARBERS

16 TAC §82.26000

COSMETOLOGISTS

16 TAC §83.26001

STATE BOARD FOR EDUCATOR CERTIFICATION

PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

19 TAC §230.4656002

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

LICENSURE OF CERTAIN OUT-OF-STATE APPLICANTS

22 TAC §79.26004

TEXAS BOARD OF PROFESSIONAL ENGINEERS

LICENSING

22 TAC §133.126006

TEXAS FUNERAL SERVICE COMMISSION

LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.376006

TEXAS OPTOMETRY BOARD

GENERAL RULES

22 TAC §273.146007

TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

EXAMINATIONS

22 TAC §371.186009

TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

GENERAL RULES OF PROCEDURES AND PRACTICES

22 TAC §661.516010

PROPOSED RULES

OFFICE OF THE ATTORNEY GENERAL

CHILD SUPPORT ENFORCEMENT

1 TAC §§55.202 - 55.205, 55.207, 55.208, 55.212, 55.214, 55.2156013

OFFICE OF THE SECRETARY OF STATE

WRESTLING PROMOTERS

1 TAC §104.1, §104.106015

SOLICITATIONS

1 TAC §105.2096015

DEPARTMENT OF INFORMATION RESOURCES

PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.26016

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

REIMBURSEMENT RATES

1 TAC §355.5016018

TEXAS DEPARTMENT OF AGRICULTURE

QUARANTINES AND NOXIOUS PLANTS

4 TAC §§19.180 - 19.1836019

TEXAS ANIMAL HEALTH COMMISSION

ENTRY REQUIREMENTS

4 TAC §51.3, §51.136021

RAILROAD COMMISSION OF TEXAS

OIL AND GAS DIVISION

16 TAC §3.786023

TEXAS BOARD OF PROFESSIONAL ENGINEERS

LICENSING

22 TAC §133.116027

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

RULES RELATING TO PRACTICE AND PROCEDURE

22 TAC §157.116028

DEPARTMENT OF STATE HEALTH SERVICES

ZOONOSIS CONTROL

25 TAC §169.1026029

TEXAS DEPARTMENT OF INSURANCE

PROPERTY AND CASUALTY INSURANCE

28 TAC §5.41016032

28 TAC §5.4201	6032	4 TAC §24.11	6047
28 TAC §5.4401	6033	TEXAS AGRICULTURAL FINANCE AUTHORITY: RURAL DEVELOPMENT	
28 TAC §5.4501	6033	4 TAC §§25.3, 25.7 - 25.11	6048
GENERAL LAND OFFICE		4 TAC §§25.20 - 25.34	6048
COASTAL AREA PLANNING		TEXAS AGRICULTURAL FINANCE AUTHORITY: LINKED DEPOSIT PROGRAM	
31 TAC §§15.24, 15.31, 15.33	6034	4 TAC §26.12	6048
STATE PENSION REVIEW BOARD		TEXAS AGRICULTURAL FINANCE AUTHORITY: FINANCIAL ASSISTANCE PROGRAM RULES	
STANDARDIZED FORM		4 TAC §§28.2, 28.7 - 28.11, 28.15	6049
40 TAC §605.1	6036	4 TAC §28.16	6050
40 TAC §605.3	6037	TEXAS AGRICULTURAL FINANCE AUTHORITY: YOUNG FARMER LOAN GUARANTEE PROGRAM	
ADOPTED RULES		4 TAC §30.12	6050
TEXAS ETHICS COMMISSION		TEXAS RACING COMMISSION	
REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES		RACETRACK LICENSES AND OPERATIONS	
1 TAC §20.527	6039	16 TAC §309.8	6050
OFFICE OF THE SECRETARY OF STATE		16 TAC §309.120	6051
ELECTIONS		16 TAC §309.164	6051
1 TAC §81.60, §81.65	6039	OTHER LICENSES	
1 TAC §81.63	6040	16 TAC §311.211	6051
1 TAC §81.71	6040	OFFICIALS AND RULES OF HORSE RACING	
1 TAC §§81.172 - 81.174	6040	16 TAC §313.501	6052
TEXAS HEALTH AND HUMAN SERVICES COMMISSION		TEXAS APPRAISER LICENSING AND CERTIFICA- TION BOARD	
MEDICAID HEALTH SERVICES		RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT	
1 TAC §§354.1015, 354.1021, 354.1023	6041	22 TAC §153.24	6052
1 TAC §354.1052	6041	TEXAS STATE BOARD OF PLUMBING EXAMINERS	
1 TAC §354.1102	6042	ADMINISTRATION	
1 TAC §§354.1231, 354.1233, 354.1235	6042	22 TAC §361.6	6053
REIMBURSEMENT RATES		TEXAS PARKS AND WILDLIFE DEPARTMENT	
1 TAC §355.8063	6045	EXECUTIVE	
1 TAC §355.8065	6045	31 TAC §51.601	6056
TEXAS DEPARTMENT OF AGRICULTURE		31 TAC §§51.606 - 51.611	6056
SEED QUALITY		31 TAC §§51.621 - 51.624	6057
4 TAC §9.3	6046	31 TAC §51.631, §51.632	6058
EGG LAW		31 TAC §§51.641 - 51.643	6059
4 TAC §15.4	6046	31 TAC §51.651, §51.652	6059
NURSERY PRODUCTS AND FLORAL ITEMS		31 TAC §51.661, §51.662	6059
4 TAC §22.2, §22.3	6047		
TEXAS AGRICULTURAL FINANCE AUTHORITY: FARM AND RANCH FINANCE PROGRAM			

31 TAC §§51.671 - 51.674.....	6060	40 TAC §§819.301 - 819.328.....	6076
OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER		40 TAC §§819.401 - 819.416.....	6076
RULES OF THE TEXAS STATEWIDE EMERGENCY SERVICES RETIREMENT FUND		40 TAC §§819.421 - 819.423.....	6077
34 TAC §§301.1 - 301.12.....	6060	40 TAC §§819.431 - 819.435.....	6077
GENERAL PROVISIONS RELATING TO THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM		40 TAC §§819.441 - 819.443.....	6077
34 TAC §§302.1 - 302.5.....	6060	40 TAC §819.451.....	6077
MEMBERSHIP IN THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM		40 TAC §819.461.....	6078
34 TAC §304.1, §304.2.....	6061	40 TAC §819.471.....	6078
CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM		40 TAC §819.481.....	6078
34 TAC §306.1.....	6061	40 TAC §§819.1 - 819.3.....	6078
BENEFITS FROM THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM		40 TAC §§819.10 - 819.12.....	6079
34 TAC §§308.1 - 308.4.....	6062	40 TAC §§819.21 - 819.26.....	6080
ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM		40 TAC §§819.41 - 819.52.....	6081
34 TAC §§310.1 - 310.9.....	6063	40 TAC §§819.71 - 819.76.....	6082
TEXAS DEPARTMENT OF PUBLIC SAFETY		40 TAC §§819.91 - 819.93.....	6082
COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES		40 TAC §819.111, §819.112.....	6083
37 TAC §4.1.....	6064	40 TAC §§819.121 - 819.135.....	6084
37 TAC §§4.11, 4.13, 4.16.....	6065	40 TAC §§819.151 - 819.156.....	6084
TEXAS WORKFORCE COMMISSION		40 TAC §819.171, §819.172.....	6087
TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION		40 TAC §§819.191 - 819.201.....	6087
40 TAC §§819.1 - 819.6.....	6073	40 TAC §819.221.....	6087
40 TAC §§819.11 - 819.21.....	6073	RULE REVIEW	
40 TAC §§819.51 - 819.55.....	6073	Proposed Rule Review	
40 TAC §§819.71 - 819.94.....	6074	Public Utility Commission of Texas.....	6089
40 TAC §819.101.....	6074	TABLES AND GRAPHICS	
40 TAC §819.111.....	6074	6093
40 TAC §819.121.....	6074	IN ADDITION	
40 TAC §819.131.....	6075	Texas State Affordable Housing Corporation	
40 TAC §§819.151 - 819.157.....	6075	Notice of Proposed Multifamily Bond Program Guidelines.....	6111
40 TAC §819.161.....	6075	Texas Department of Agriculture	
40 TAC §§819.171 - 819.173.....	6075	Notice of Extension of Comment Period.....	6111
40 TAC §§819.181 - 819.188.....	6076	Office of the Attorney General	
40 TAC §§819.191 - 819.199, 819.210 - 819.218.....	6076	Notice of Determination.....	6111
		Texas Health and Safety Code, Texas Water Code and Texas Clean Air Act Enforcement Settlement Notice.....	6111
		Coastal Coordination Council	
		Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program.....	6112
		Comptroller of Public Accounts	
		Certification of the Average Taxable Price of Gas and Oil.....	6112

Office of Consumer Credit Commissioner	
Notice of Rate Ceilings.....	6112
East Texas Council of Governments	
Soliciting Proposals to Facilitate a Strategic Planning Process for the East Texas Workforce Development Area	6113
Texas Commission on Environmental Quality	
Notice of Water Quality Applications.....	6113
Notice of Water Rights Application.....	6114
General Land Office	
Notice of Approval of Coastal Boundary Survey	6115
Department of State Health Services	
Licensing Actions for Radioactive Materials.....	6115
Notice of Emergency Impoundment Order on GSD Trading USA, Inc.	6119
Notice of Emergency Impoundment Order on NUCOR Steel.....	6119
Texas Department of Housing and Community Affairs	
Request for Proposal for Bond Counsel.....	6119
Request for Proposal for Bond/Securities Disclosure Counsel.....	6120
Texas Higher Education Coordinating Board	
Request for Proposals for the Texas Fund for Geography Education	6120
Texas Department of Insurance	
Company Licensing	6121
Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer.....	6121
Third Party Administrator Applications	6121
Texas Lottery Commission	
Instant Game Number 603 "Set for Life"	6121
Texas State Board of Pharmacy	
Election of Officers	6127
Texas Board of Professional Engineers	
Policy Advisory Stakeholder Request EAOR #12 - Professional Design of Indoor Antenna Systems.....	6127
Public Utility Commission of Texas	
Announcement of Application for State-Issued Certificate of Franchise Authority	6128
Notice of Application to Amend Certificated Service Area Boundaries	6128
Sul Ross State University	
Request for Proposals	6128
Texas Department of Transportation	
Aviation Division - Request for Proposal for Aviation Engineering Services	6129
Aviation Division - Request for Proposal for Aviation Engineering Services	6129
Aviation Division - Request for Proposal for Aviation Engineering Services	6130
Aviation Division - Request for Proposal for Aviation Engineering Services	6131
Aviation Division - Request for Proposal for Aviation Engineering Services	6131
Aviation Division - Request for Proposal for Aviation Engineering Services	6132
Aviation Division - Request for Proposal for Professional Services	6132
The University of Texas System	
Notice on Entering into Major Consulting Services Contract	6133
Texas Water Development Board	
Applications Received	6133

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are

requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0386-GA

Requestor:

The Honorable Steven B. Payson

Dawson County Attorney

Post Office Box 1268

Lamesa, Texas 79331

Re: Proper formula for distribution of permanent school funds by Dawson County (RQ-0386-GA)

Briefs requested by October 8, 2005

RQ-0387-GA

Requestor:

The Honorable Jane Nelson

Chair, Health and Human Services Committee

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

The Honorable Suzanna Hupp

Chair, Human Services Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Amendments to section 107.004 of the Family Code regarding hearings for children for whom guardians ad litem are appointed (RQ-0387-GA)

Briefs requested by October 8, 2005

RQ-0388-GA

Requestor:

The Honorable Jerry Patterson

Commissioner

Texas General Land Office

Post Office Box 12873

Austin, Texas 78711-2873

Re: Constitutionality of section 33.613, Natural Resources Code, which permits the restoration of submerged Permanent School Fund (PSF) land to property owners without compensation to the PSF (RQ-0388-GA)

Briefs requested by October 12, 2005

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200504073

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: September 14, 2005

◆ ◆ ◆

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 133. FORMS

7 TAC §133.23

The Texas State Securities Board adopts by reference on an emergency basis new §133.23, a form concerning the Hurricane Katrina exemption notice.

The new form enables dealers, agents, investment advisers, or investment adviser representatives effecting securities transactions with preexisting clients who have been displaced as a result of Hurricane Katrina to file for an exemption from registration. This form must be filed by dealers, agents, investment advisers, and investment adviser representatives before conducting transactions permitted by emergency new §139.23. This rule provides an exemption for dealers, agents, investment advisers, or investment adviser representatives effecting securities transactions with preexisting clients who have been displaced as a result of Hurricane Katrina. Although §139.23 requires the filing of Form 133.23, no registration fee is required.

The form allows affected dealers, agents, investment advisers, or investment adviser representatives to continue transacting business with their preexisting clients who were displaced by the disaster without registration.

Form 133.23 is adopted in response to the disaster proclamation issued by Governor Rick Perry on September 1, 2005, in accordance with §418.014 of the Texas Government Code. As provided in §418.016, all rules and regulations that may inhibit or prevent prompt response to a threat are suspended for the duration of the incident. The Texas State Securities Board is taking emergency action pursuant to the Texas Government Code, §551.125.

Statutory authority: Texas Civil Statutes, Article 581-5.T and 12.C. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, and investment adviser representative registration exemptions by rule.

Cross reference to Statute: Texas Civil Statutes, Article 581-5 and Article 581-12.

§133.23. Hurricane Katrina Exemption Notice.

The State Securities Board adopts by reference the Hurricane Katrina exemption notice form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.state.tx.us.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 9, 2005.

TRD-200503993

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Effective Date: September 9, 2005

Expiration Date: January 6, 2006

For further information, please call: (512) 305-8300

CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.23

The Texas State Securities Board adopts on an emergency basis new §139.23, concerning an exemption for dealer, agent, investment adviser, or investment adviser representative effecting securities transactions with preexisting clients who have been displaced as a result of Hurricane Katrina. The new rule adopts by reference new Form 133.23, which must be filed by dealers, agents, investment advisers, and investment adviser representatives before conducting transactions allowed by this exemption.

The rule provides an exemption from registration for the dealer, agent, investment adviser, or investment adviser representative who (1) has been displaced by Hurricane Katrina and is temporarily located in Texas while doing business with his or her preexisting clients who live outside Texas and/or (2) is effecting securities transactions solely with preexisting clients who have been displaced into Texas as a result of the hurricane. The rule is intended to provide registration relief so that dealers, agents, investment advisers, and investment adviser representatives may continue to transact business with their preexisting clients who were displaced by the disaster.

Affected dealers, agents, investment advisers, and investment adviser representatives may continue to transact business with their preexisting clients who were displaced by the disaster without registration. Although Hurricane Katrina Exemption Notice Form 133.23 must be filed, no registration fee is required. The rule is temporary and expires 120 days after adoption unless extended by the State Securities Board for an additional 60 days.

The rule is in response to the disaster proclamation issued by Governor Rick Perry on September 1, 2005, in accordance with §418.014 of the Texas Government Code. As provided in §418.016, all rules and regulations that may inhibit or prevent

prompt response to a threat are suspended for the duration of the incident. The State Securities Board is taking emergency action pursuant to the Texas Government Code, §551.125.

Statutory authority: Texas Civil Statutes, Article 581-5.T and 12.C. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, and investment adviser representative registration exemptions by rule.

Cross reference to Statute: Texas Civil Statutes, Article 581-5 and Article 581-12.

§139.23. Exemption for Dealer, Agent, Investment Adviser, or Investment Adviser Representative Effecting Securities Transactions with Preexisting Clients Who Have Been Displaced as a Result of Hurricane Katrina.

(a) The State Securities Board, pursuant to the Texas Securities Act, §5.T and §12.C, exempts dealers, agents, investment advisers, and investment adviser representatives from the registration requirements of the Texas Securities Act, when such persons comply with subsections (b) - (g) of this section and are conducting a transaction with a client who is present in this state and with whom the dealer, agent, investment adviser, or investment adviser representative has a preexisting client relationship.

(b) The dealer, agent, investment adviser, or investment adviser representative at all times is registered or notice filed (if required) and in good standing with the home state from which they or their client has been displaced.

(c) The dealer, agent, investment adviser or investment adviser representative:

(1) has been displaced by Hurricane Katrina and is temporarily located in Texas while doing business with his or her preexisting clients who reside outside of Texas, and/or

(2) is effecting securities transactions solely with preexisting clients who have been displaced into Texas as a result of Hurricane Katrina.

(d) The dealer, agent, investment adviser, or investment adviser representative is not otherwise in violation of the Texas Securities Act or the securities laws in any other jurisdiction in which they are registered or notice filed.

(e) The dealer, agent, investment adviser or investment adviser representative shall file Form 133.23 prior to conducting a transaction allowed by this section.

(f) The Texas Securities Act prohibits fraud or fraudulent practices in connection with the offer for sale or the rendering of investment advice covered by this exemption.

(g) Any solicitation of new clients is subject to the registration requirements of the Texas Securities Act.

(h) Any other non-exempt securities-related activity will constitute unregistered activity and be subject to both state enforcement action and civil liability.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 9, 2005.

TRD-200503992

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective Date: September 9, 2005

Expiration Date: January 6, 2006

For further information, please call: (512) 305-8300

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 82. BARBERS

16 TAC §82.2

The Texas Department of Licensing and Regulation ("Department") adopts, on an emergency basis, a new rule at 16 Texas Administrative Code, Chapter 82, Barbers, §82.2 concerning emergency provisional certificates and licenses in the barbers program.

The rule is adopted pursuant to Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment if the adopting agency finds that an imminent peril to the public health, safety, or welfare requires adoption of the rules on less than 30 days' notice.

The Texas Commission of Licensing and Regulation ("Commission"), at an emergency called meeting on September 8, 2005, found that emergency adoption of the rule is necessary to allow individuals who have been displaced by Hurricane Katrina to obtain provisional certificates or licenses to practice barbering in Texas. Texas has received a large number of displaced individuals as a result of this disaster. Some of these individuals are licensed as barbers in their home states but are unable to practice their livelihood in Texas. On September 1, 2005, Governor Rick Perry issued a proclamation certifying that Hurricane Katrina, a disaster in sister states, has created an emergency disaster and emergency conditions for the people in the State of Texas. The Commission finds that the conditions of this disaster create an imminent peril to the public health, safety, or welfare and require the adoption of this rule on fewer than 30 days' notice. The new rule is needed to respond to the disaster and would assist certain victims by allowing them to obtain a provisional certificate or license to practice barbering in Texas. The rule would allow such an individual to obtain a provisional license to practice in Texas if the person is currently licensed in another jurisdiction, has been licensed in good standing for at least two years, and has passed an examination. The new rule would implement Texas Occupations Code, §1603.203, concerning provisional certificates or licenses, with respect to these hurricane victims.

The new rule §82.2 is adopted on an emergency basis under Texas Occupations Code, Chapters 1601 and 1603, which establish a program to regulate barbering. In particular, the rule is adopted under Texas Occupations Code §1603.203, concerning provisional certificates and licenses. The rule is also adopted under Texas Occupations Code, Chapter 51, §51.203, which authorizes the Commission to adopt rules to implement each law establishing a program regulated by it, and Texas Government Code, Chapter 2001, §2001.034, which provides for the adoption

of administrative rules on an emergency basis without notice and comment.

The statutory provisions affected by the emergency adoption are those set forth in Texas Occupations Code, Chapters 1601, 1603 and 51. No other statutes, articles, or codes are affected by the emergency adoption.

§82.2. Emergency Provisional Certificate or License.

(a) A person who has been displaced due to the emergency caused by Hurricane Katrina may apply for a provisional certificate or license under this section if:

- (1) the person is currently licensed in another jurisdiction;
- (2) the person has been licensed in good standing in the profession for which the person seeks the certificate or license for at least two years in the other jurisdiction;
- (3) the other jurisdiction has requirements substantially equivalent to the requirements of Texas Occupations Code, Chapters 1601 and 1603; and
- (4) the person has passed a national examination, an examination offered by the states of Louisiana, Mississippi, or Alabama, or other examination recognized by the commission relating to the practice of the profession.

(b) To be eligible for a provisional certificate or license, an applicant must:

- (1) submit the application on a department-approved form;
- (2) pay a fee of \$45;
- (3) provide information sufficient for the department to verify the applicant's licensure in the other jurisdiction; and
- (4) affirm that the applicant is applying for the provisional certificate or license due to the emergency caused by Hurricane Katrina.

(c) A provisional certificate or license is valid for 180 days after the date of issuance. The term of the provisional certificate or license may be extended if the holder of the provisional certificate or license has applied to the department for a certificate or license and has taken the appropriate examination, and the department has not received the results of the examination before the end of the 180-day period.

(d) A provisional certificate or license holder is exempt from the requirement to obtain a booth rental permit under Title 22, Texas Administrative Code §51.97 during the term of the provisional certificate or license.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 8, 2005.

TRD-200503966

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective Date: September 8, 2005

Expiration Date: January 5, 2006

For further information, please call: (512) 463-7348



CHAPTER 83. COSMETOLOGISTS

16 TAC §83.2

The Texas Department of Licensing and Regulation ("Department") adopts, on an emergency basis, a new rule at 16 Texas Administrative Code, Chapter 83, Cosmetologists, §83.2 concerning emergency provisional certificates and licenses in the cosmetologists program.

The rule is adopted pursuant to Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment if the adopting agency finds that an imminent peril to the public health, safety, or welfare requires adoption of the rules on less than 30 days' notice.

The Texas Commission of Licensing and Regulation ("Commission"), at an emergency called meeting on September 8, 2005, found that emergency adoption of the rule is necessary to allow individuals who have been displaced by Hurricane Katrina to obtain provisional certificates or licenses to practice cosmetology in Texas. Texas has received a large number of displaced individuals as a result of this disaster. Some of these individuals are licensed as cosmetologists in their home states but are unable to practice their livelihood in Texas. On September 1, 2005, Governor Rick Perry issued a proclamation certifying that Hurricane Katrina, a disaster in sister states, has created an emergency disaster and emergency conditions for the people in the State of Texas. The Commission finds that the conditions of this disaster create an imminent peril to the public health, safety, or welfare and require the adoption of this rule on fewer than 30 days' notice. The new rule is needed to respond to the disaster and would assist certain victims by allowing them to obtain a provisional certificate or license to practice cosmetology in Texas. The rule would allow such an individual to obtain a provisional license to practice in Texas if the person is currently licensed in another jurisdiction, has been licensed in good standing for at least two years, and has passed an examination. The new rule would implement Texas Occupations Code, §1603.203, concerning provisional certificates or licenses, with respect to these hurricane victims.

The new rule §83.2 is adopted on an emergency basis under Texas Occupations Code, Chapters 1602 and 1603, which establish a program to regulate cosmetology. In particular, the rule is adopted Texas Occupations Code §1603.203, concerning provisional certificates and licenses. The rule is also adopted under Texas Occupations Code, Chapter 51, §51.203, which authorizes the Commission to adopt rules to implement each law establishing a program regulated by it, and Texas Government Code, Chapter 2001, §2001.034, which provides for the adoption of administrative rules on an emergency basis without notice and comment.

The statutory provisions affected by the emergency adoption are those set forth in Texas Occupations Code, Chapters 1602, 1603 and 51. No other statutes, articles, or codes are affected by the emergency adoption.

§83.2. Emergency Provisional Certificate or License.

(a) A person who has been displaced due to the emergency caused by Hurricane Katrina may apply for a provisional certificate or license under this section if:

- (1) the person is currently licensed in another jurisdiction;

(2) the person has been licensed in good standing in the profession for which the person seeks the certificate or license for at least two years in the other jurisdiction;

(3) the other jurisdiction has requirements substantially equivalent to the requirements of Texas Occupations Code, Chapters 1602 and 1603; and

(4) the person has passed a national examination, an examination offered by the states of Louisiana, Mississippi, or Alabama, or other examination recognized by the commission relating to the practice of the profession.

(b) To be eligible for a provisional certificate or license, an applicant must:

(1) submit the application on a department-approved form;

(2) pay a fee of \$45;

(3) provide information sufficient for the department to verify the applicant's licensure in the other jurisdiction; and

(4) affirm that the applicant is applying for the provisional certificate or license due to the emergency caused by Hurricane Katrina.

(c) A provisional certificate or license is valid for 180 days after the date of issuance. The term of the provisional certificate or license may be extended if the holder of the provisional certificate or license has applied to the department for a certificate or license and has taken the appropriate examination, and the department has not received the results of the examination before the end of the 180-day period.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 8, 2005.

TRD-200503967

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective Date: September 8, 2005

Expiration Date: January 5, 2006

For further information, please call: (512) 463-7348



TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER O. TEXAS EDUCATOR CERTIFICATES BASED ON CERTIFICATION AND COLLEGE CREDENTIALS FROM OTHER STATES OR TERRITORIES OF THE UNITED STATES

19 TAC §230.465

The State Board for Educator Certification (SBEC) adopts on an emergency basis new §230.465, relating to an emergency certificate for the 2005 - 2006 school year for educators serving in Texas public schools affected by Hurricane Katrina. The new section provides for issuance of a nonrenewable certificate for the 2005 - 2006 school year for educators serving in Texas public schools affected by Hurricane Katrina.

The new section is adopted on an emergency basis to take effect immediately pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if necessary because of the imminent peril to health, safety and welfare. The emergency rule is necessary because of the imminent peril to health, safety and welfare presented by the impact of Hurricane Katrina on the public education system of this state. The emergency adoption of the new section will allow SBEC to provide relief to the displaced educators coming to Texas due to the catastrophe caused by Hurricane Katrina.

This emergency adoption is necessary due to the historically large number of public school students arriving daily in districts across Texas from the State of Louisiana, as well as potentially Mississippi and Alabama. As the number of evacuated students seeking educational services in Texas increases daily, the ultimate impact on Texas is unknown at this time. In order to provide relief to the students and educators coming to Texas due to the catastrophe in our sister state, the State Board for Educator Certification must consider immediate action to adopt an emergency rule providing a one time nonrenewable certificate for educators coming to Texas to help the public schools of this state cope with the crisis. It is the policy of the State Board for Educator Certification to provide relief to the students and educators coming to Texas due to the catastrophe in our sister state.

The SBEC finds that adoption of this new section on fewer than 30 days notice is necessary because of the imminent peril to health, safety and welfare presented by Hurricane Katrina on the public education system of this state.

The new section is adopted on an emergency basis under Texas Education Code, §21.031(a), which authorizes SBEC to regulate and to oversee all aspects of the certification of public school educators. The new section is also adopted pursuant to Government Code §2001.034.

§230.465. *Emergency Certificate for the 2005 - 2006 School Year for Educators Serving in Texas Public Schools Affected by Hurricane Katrina.*

(a) Purpose. An historically large number of public school students is arriving daily in districts across Texas from the State of Louisiana, as well as potentially Mississippi and Alabama. As the number of evacuated students seeking educational services in Texas increases daily, the ultimate impact on Texas is unknown at this time. In order to provide relief to the students and educators coming to Texas due to the catastrophe in our sister state, the State Board for Educator Certification must consider immediate action to adopt an emergency rule providing a one time nonrenewable certificate for educators coming to Texas to help the public schools of this state cope with the crisis.

(b) Hurricane Katrina emergency certificate. The State Board for Educator Certification hereby adopts and approves a one-time non-renewable certificate in response to Hurricane Katrina. This certificate shall be valid for the 2005 - 2006 school year and shall be available to any educator hired by a Texas public school district during the 2005 - 2006 school year for the purpose of meeting unanticipated staffing requirements caused by this catastrophe. Notwithstanding any other

provisions under this section, priority for approval of this certificate will be given to Louisiana educators displaced by Hurricane Katrina.

(c) Responsibilities of the applicant. The following actions are required by the applicant in order to initiate an application for a certificate under this section.

(1) Submit a complete and signed application.

(A) An applicant for a certificate under this section shall submit all required identifying and demographic information concerning the applicant that is otherwise required for a certificate to be issued by the State Board for Educator Certification.

(B) Notwithstanding any other provision in this part of this title, an applicant for a certificate under this section shall submit the following additional information:

(i) the certificate number of, and any other information identifying, each certificate held by the applicant in any state of the United States, including any expired, cancelled, invalid, revoked, suspended, or otherwise sanctioned certificate ever issued to the applicant in any state of the United States;

(ii) the exact name or names under which each certificate held by the applicant in any state of the United States was issued or was ever held by the applicant, including any expired, cancelled, invalid, revoked, suspended, or otherwise sanctioned certificate ever issued to the applicant;

(iii) each and every social security number, or other United States government issued identifying number, ever used by the applicant for any purpose;

(iv) the name of the school district where the applicant is being considered for hire; and

(v) the current status of each certificate ever held by or issued to the applicant in any state of the United States, including a complete list of each sanction or other credentialing action taken by any state of the United States against the applicant or a credential held by the applicant, including the date and action taken.

(C) Notwithstanding any other provision in this part of this title, processing of the application may begin only after all information is provided and the application is signed either manually or by electronic means as determined by the Texas Education Agency under Texas Education Code, §21.035.

(2) Obtain and submit appropriate fingerprints for a national criminal history background check. Notwithstanding any other provision in this part of this title, an applicant for a certificate under this section shall obtain and submit appropriate fingerprints for a national criminal history check in a manner determined by the Texas Education Agency under Texas Education Code, §21.035. This requirement applies whether or not the applicant's home state has already run a national criminal history background check of the applicant. The fingerprints must be submitted to the agency within 15 calendar days of the submission of the signed application for this emergency certificate.

(3) Pay the required fee. Notwithstanding any other provision in this part of this title, the application fee for a certificate under this section may be waived. An applicant must pay a nonrefundable \$47 fee comprised of the regular fee provided by §230.436(10) of this title (relating to Schedule of Fees for Certification Services) for conducting a national criminal history check plus the \$2 supplemental fee required by §230.438 of this title (relating to E-Pay Supplemental Fee). The Texas Education Agency may reduce or waive this fee for evacuated educators only if other funds are identified or if other state and federal agencies reduce the fees normally charged for such services.

(d) Responsibilities of the sponsoring school district. The following actions are required by the sponsoring school district in order to initiate a pending application for a certificate under this section.

(1) The sponsoring district must submit the following in the manner directed by the Texas Education Agency:

(A) the full name, social security number, and current Texas address of the applicant hired by the sponsoring district, including a working telephone number, and an electronic mail address for the applicant;

(B) the date the applicant will be employed by the sponsoring district as well as a primary point of contact for the district, including the name, phone number and e-mail address, if one is available;

(C) the anticipated assignment of the educator for the 2005 - 2006 school year by campus, grade level, and subject, if applicable; and

(D) the certificate number of, and any other information identifying, one or more standard, currently effective educator certificates issued to and currently held by the applicant sponsored by the district. The certificate held does not have to be one that would authorize the educator to serve in the other state in the assignment in which the educator will serve in Texas, so long as the sponsoring district is satisfied that the out-of-state credential is sufficient for the particular assignment under the circumstances of this emergency.

(2) The superintendent of the sponsoring district must execute and submit in proper form an affidavit verifying that the superintendent has personal knowledge after due diligence of the following facts:

(A) the applicant is the person hired by the district as reflected by the information submitted by the sponsoring district under paragraph (1)(B) of this subsection;

(B) the applicant is the person who holds the standard certificate identified in paragraph (1)(D) of this subsection;

(C) the standard certificate identified in paragraph (1)(D) of this subsection is valid, in good standing, and in full force and effect on the date of the affidavit; and

(D) the applicant will be hired by the sponsoring district for the purpose of meeting unanticipated staffing requirements caused by the arrival of new students displaced by Hurricane Katrina.

(e) Contingent authorization pending criminal history check. The following contingent authorization describes the status of an applicant upon certification in writing from the Texas Education Agency staff that all responsibilities of the applicant and of the sponsoring school district under this section have been satisfactorily met. E-mail notification will suffice as written notice under this section.

(1) The State Board for Educator Certification through its staff at the Texas Education Agency will notify the sponsoring district of each applicant in writing once it has received each item required by subsections (c) and (d) of this section.

(2) On receipt of written notice as provided in paragraph (1) of this subsection, and contingent on the outcome of the criminal background check of the applicant, the sponsoring district is authorized to assign the applicant to any position in the district for the purpose of meeting unanticipated staffing requirements caused by Hurricane Katrina.

(3) The staff at the Texas Education Agency will notify the sponsoring district of each applicant in writing once the Board

has completed its criminal background check of the applicant. Once a criminal background check is completed, the school district will receive written notice either that the request for a certificate was declined or that a certificate will issue in due course. On receipt of written notice that the Board declines to issue a certificate under this section, the contingent authorization provided by paragraph (2) of this subsection shall end immediately. The district may not continue to employ the person under this section.

(4) An applicant who is the subject of a contingent authorization issued to the applicant's sponsoring district under this section has no right or expectation whatsoever in the contingent authorization provided by paragraph (2) of this subsection. The State Board for Educator Certification may decline to issue, deny, delay, cancel, or withdraw any contingent authorization under this section at any time, with or without good cause. The applicant who is the subject of a contingent authorization shall have no right to any appeal, hearing, or other procedure before or after such action, and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases Including Enforcement of the Educator's Code of Ethics) shall not apply. In such circumstances, the fee charged under subsection (c)(3) of this section may be refunded at the discretion of the State Board for Educator Certification, but only if the services for which the fee was charged have not yet been performed.

(f) Period of validity; scope of activities authorized. The holder of a valid, currently effective certificate issued under this section may be employed by the sponsoring school district in a capacity listed in Texas Education Code, §21.003, from the date of issuance through the end of the 2005 - 2006 school year, including summer or other remedial programs, unless cancelled, revoked, suspended, probated, or otherwise invalidated by the State Board for Educator Certification before that time.

(g) No expectation or right in certification; no appeal. The applicant for a certificate under this section has no right or expectation whatsoever in the issuance or continuation of such certificate. The State Board for Educator Certification may decline to issue, deny, delay, cancel, or withdraw any certificate under this section at any time, with or without good cause. The applicant shall have no right to any appeal, hearing, or other procedure before or after such action, and Chapter 249 of this title shall not apply. In such circumstances, the fee charged under subsection (c)(3) of this section may be refunded at the discretion of the State Board for Educator Certification, but only if the services for which the fee was charged have not yet been performed.

(h) Application for other credentials. Individuals issued a certificate under the provisions of this section will not be disqualified from eligibility for another credential available under this title solely on the basis of the individual's experience earned in the Texas public schools during the 2005 - 2006 school year.

(i) Educators from states other than Louisiana. The State Board for Educator Certification chair or vice chair may allow applications from educators certified in another state in addition to Louisiana as necessary to meet the needs of students evacuated because of Hurricane Katrina. The chair or vice chair may limit the number or areas of qualification to additional states authorized under this subsection. Any determination under this subsection shall be published in the *Texas Register* and sent by e-mail notice to Texas school districts.

(j) Board action under this section. Any actions by the Board under this section may be taken by Texas Education Agency staff designated by the commissioner of education.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 6, 2005.

TRD-200503883

Jim Thompson

General Counsel

State Board for Educator Certification

Effective Date: September 6, 2005

Expiration Date: January 3, 2006

For further information, please call: (512) 936-8304

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 79. LICENSURE OF CERTAIN OUT-OF-STATE APPLICANTS

22 TAC §79.2

The Texas Board of Chiropractic Examiners (Board) adopts, on an emergency basis, a new rule to this title, §79.2, relating to the temporary licensure of chiropractors displaced by Hurricane Katrina. As authorized by Texas Government Code §2001.034, the Board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Board finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days notice. An emergency rule adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed once for not longer than 60 days.

The Board finds that there is an imminent peril to public welfare due to the number of Louisiana, Mississippi, and Alabama chiropractors who have been displaced by Hurricane Katrina and who desire to temporarily practice in Texas as a means of providing for themselves and their families. On September 1, 2005, Governor Perry issued an executive order certifying that Hurricane Katrina had created an emergency disaster and emergency conditions for Texas. On September 8, 2005, the Board held an emergency meeting at 10:00 a.m. in the Board's office in Austin to consider this emergency rule.

The Board's existing rules for temporary licenses, set forth under §71.12 of this title, relating to temporary licenses, cannot be applied in this situation where doctors may likely need and desire to practice in Texas for more than 30 days. While the Board's existing reciprocity rule under §79.1 of this title, relating to general requirements for licensure of certain out-of-state applicants, may be applicable for some doctors, §79.1 cannot be applied to doctors who have practiced for less than three years.

Under this emergency rule, the Board will issue a temporary license to doctors of chiropractic who can demonstrate that they are licensed in good standing in Alabama, Louisiana, or Mississippi, that during the previous twelve months they have either been practicing chiropractic or practiced as a chiropractic educator at a chiropractic school, that they have been displaced by Hurricane Katrina, that they have a letter of invitation or other

document from a sponsoring entity in Texas, and that they have successfully completed either the jurisprudence examination or the 2-credit hour online course available at www.tbce.state.tx.us. The cost to take the jurisprudence exam is \$150. The cost for the online course is \$50. There is also an application fee of \$100. This emergency rule is effective September 9, 2005, and will remain in effect until January 9, 2006, unless the Board authorizes the Executive Director to extend the emergency rule for an additional 60 days, until March 10, 2006.

Under this emergency rule, the Board is temporarily lessening the reciprocity requirements for doctors from the affected states that desire a permanent license to practice chiropractic in Texas. To qualify for reciprocity under §79.1 of this title and this emergency rule, a doctor may have practiced for less than three years and may submit copies of documents where originals are not available. Applications for reciprocity under this emergency rule must be submitted prior to expiration of this emergency rule on January 9, 2006, or if the emergency rule is extended by an additional 60 days, by no later than January 31, 2006.

This emergency rule is adopted under Texas Government Code §2001.034, relating to emergency rulemaking, and Texas Occupations Code §201.152, relating to rules, and §201.301, relating to license required, and §201.308, relating to temporary license. Texas Government Code §2001.034, authorizes the adoption of an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. Texas Occupations Code §201.152 authorizes the board to adopt rules necessary to regulate the practice of chiropractic. Section 201.301 requires that a person may not practice chiropractic unless the person holds a license issued by the Board. Section 201.308 provides that the Board may adopt rules for the issuance of a temporary license.

§79.2. Temporary Licensure of Chiropractors Displaced by Hurricane Katrina.

(a) An individual who is licensed in the states of Alabama, Louisiana, or Mississippi may, upon application and proper documentation, be issued a temporary license under the following circumstances:

(1) The applicant must be licensed in good standing as a doctor of chiropractic in the State of Alabama, the State of Louisiana, or the State of Mississippi and must furnish proof of such licensure on board forms provided.

(2) The applicant must demonstrate that at some time during the previous twelve months, that they have either:

(A) practiced chiropractic, or

(B) practiced as a chiropractic educator at a chiropractic school accredited by the Council on Chiropractic Education.

(3) The applicant must provide a signed and notarized statement describing how they have been displaced by Hurricane Katrina and why they are unable to practice in their state of residence.

(4) The applicant must submit a letter of invitation or other document from a sponsoring entity showing that the applicant is invited to provide chiropractic services in Texas. The sponsoring entity may be a licensed doctor of chiropractic or a chiropractic school accredited by the Council on Chiropractic Education.

(5) The applicant must not have been the subject of a disciplinary action in their state of residency, and the applicant must not

be the subject of a pending investigation in any jurisdiction in which the applicant is, or has been licensed.

(6) The applicant must complete either:

(A) the Texas jurisprudence examination with a passing grade of 75 percent or better, or

(B) the 2-credit hour online course available at www.tbce.state.tx.us.

(7) The applicant must submit a \$100 fee.

(b) In lieu of the requirements under subsection (a) of this section, an applicant may apply for reciprocity under §79.1 of this title, relating to general requirements for licensure of certain out-of-state applicants.

(1) The requirement under §79.1(a)(6) of this title that an applicant have practiced for at least three years immediately preceding the date of application is waived. An applicant need only demonstrate that at some time during the previous twelve months, that they have either:

(A) practiced chiropractic, or

(B) practiced as a chiropractic educator at a chiropractic school accredited by the Council on Chiropractic Education.

(2) If an applicant is unable to provide any original documents, copies of the documents may be submitted along with an affidavit attesting to the authenticity of the documents from either a school that issued an original document or a licensing board that has an original document in its files.

(3) The applicant must provide a signed and notarized statement describing how they have been displaced by Hurricane Katrina and why they are unable to practice in their state of residence.

(4) An applicant must apply for reciprocity under this subsection either prior to expiration of this emergency rule on January 9, 2006, or if the emergency rule is extended by an additional 60 days, by no later than January 31, 2006. If an application for reciprocity is submitted prior to these dates, a temporary license issued under this emergency rule will remain in effect until April 30, 2006.

(c) The sponsoring entity for an applicant under this section shall ensure that a person granted temporary privileges under this section abides by the Texas Chiropractic Act and the rules of the board. Violations of the Texas Chiropractic Act, board rules, or the temporary license by the temporary licensee will subject the sponsoring entity to disciplinary action by the board.

(d) A person granted a temporary license under this section shall abide by the Texas Chiropractic Act and the rules of the board. The granting of a temporary license under this section constitutes limited authority to practice chiropractic in Texas. Violations of the Texas Chiropractic Act, board rules, or the temporary license will subject the temporary licensee to disciplinary action by the board.

(e) A temporary license issued under this emergency rule will be valid until January 31, 2006, unless the Executive Director extends this emergency rule for an additional 60 days, in which case, a temporary license will be valid until March 31, 2006.

(f) A temporary license issued prior to expiration of this emergency rule will remain in effect until the temporary license expires even if this emergency rule is no longer in effect.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 9, 2005.

TRD-200503981

Sandra Smith

Executive Director

Texas Board of Chiropractic Examiners

Effective Date: September 9, 2005

Expiration Date: January 6, 2006

For further information, please call: (512) 305-6709

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 133. LICENSING

SUBCHAPTER B. PROFESSIONAL ENGINEER LICENSES

22 TAC §133.12

The Texas Board of Professional Engineers adopts new §133.12, concerning an Emergency Temporary License, on an emergency basis.

The new rule outlines the process and conditions the Board will use to issue an Emergency Temporary License. This new license type will be only available to those licensed Professional Engineers affected by Hurricane Katrina and applying for a license in Texas. A license issued under this rule will be temporary and be valid for 180 days from the date issued. A simplified application process is outlined in the rule. The new rule will only be effective for the duration of the proclamation of emergency by the Governor of the State of Texas and any subsequent extensions thereof.

As a result of the proclamation by the Governor of the State of Texas dated September 1, 2005, declaring a state of emergency due to Hurricane Katrina, the Texas Board of Professional Engineers has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning Emergency Rule-making have been satisfied to adopt a new rule concerning the issuance of Emergency Temporary Licenses to applicants from Louisiana, Mississippi, and Alabama.

The new rule is adopted on an emergency basis under the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

§133.12. Emergency Temporary License.

(a) Per §1001.310 of the Act and by the proclamation issued September 1, 2005, by the Governor of the State of Texas, the board may issue an Emergency Temporary License to individuals who meet the following requirements:

(1) Applicant is currently licensed as a Professional Engineer, is in good standing, and has no current or pending disciplinary actions in the state of Louisiana, Mississippi, or Alabama;

(2) Applicant is unable to continue to practice or reside in Louisiana, Mississippi, or Alabama as a result of Hurricane Katrina; and

(3) Applicant has submitted to the board in writing an Emergency Temporary License application described in this section.

(b) An Emergency Temporary License Application shall consist of the following items:

(1) Emergency Temporary License Application form;

(2) passing score on the Texas Engineering Professional Conduct and Ethics Examination;

(3) verification of current licensure from home jurisdiction; and

(4) verification of current disciplinary status from home jurisdiction.

(c) Except as provided in this section, an Emergency Temporary License holder shall be subject to all other rules, laws, and legal requirements to which a holder of a standard license is subject.

(d) An Emergency Temporary License issued under this section shall be valid for 180 days from the date the license is issued, or until expiration of the proclamation by the Governor of the State of Texas, whichever is later, and may not be renewed.

(e) An applicant that has been issued an Emergency Temporary License may apply for a standard license using the standard license application process.

(f) Emergency Temporary License applications may be accepted for the effective duration of the proclamation by the Governor of the state of Texas.

(g) No fee is required to apply for an Emergency Temporary License and the Fee Increase as required in §1001.206 of the Act has been waived by proclamation by the Governor of the State of Texas.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 8, 2005.

TRD-200503947

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective Date: September 8, 2005

Expiration Date: January 5, 2006

For further information, please call: (512) 440-7723

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.37

The Texas Funeral Service Commission adopts, on an emergency basis, new rule §203.37, relating to the temporary licensure of Louisiana, Mississippi, or Alabama funeral directors and embalmers displaced by Hurricane Katrina. As authorized by Texas Government Code §2001.034, the Board may adopt an

emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Board finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days notice. The Commission finds that there is an imminent peril to public welfare due to the number of Louisiana, Mississippi, and Alabama funeral directors and/or embalmers that have been displaced by Hurricane Katrina and that desire to temporarily practice in Texas as a means of providing for themselves and their families. On September 1, 2005, Governor Perry issued an executive order certifying that Hurricane Katrina had created an emergency disaster and emergency conditions for Texas. An emergency rule adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed once for not longer than 60 days.

Under this emergency rule, the Commission will issue a temporary license to applicants who demonstrate that they are licensed in good standing in Louisiana, Mississippi, or Alabama, have practiced as a funeral director or embalmer for at least one year, and have been displaced by Hurricane Katrina.

This emergency rule is adopted under Texas Government Code §2001.034, relating to emergency rulemaking, and Texas Occupations Code §651.152, relating to rules, and §651.251, relating to license required. Texas Government Code §2001.034, authorizes the adoption of an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. Texas Occupations Code §651.152 authorizes the board to adopt rules necessary to regulate the practice of funeral directing and/or embalming. Section 651.251 requires that a person may not practice funeral directing and/or embalming unless the person holds a license issued by the Commission.

The new rule is effective immediately upon filing with the *Texas Register*.

No other statutes, articles, or codes are affected by this emergency rule.

§203.37. Temporary Licensure of Louisiana, Mississippi, and Alabama Funeral Directors and/or Embalmers.

(a) An individual who is licensed in the State of Louisiana, Mississippi, or Alabama shall be issued a temporary license under the following circumstances:

(1) The applicant must be licensed in good standing as a funeral director and/or embalmer in the State of Louisiana, Mississippi, or Alabama and must furnish proof of such licensure.

(2) The applicant must demonstrate that at some time during the previous twelve months, they have practiced funeral directing and/or embalming in Louisiana, Mississippi or Alabama.

(3) The applicant must provide a signed and notarized statement describing how they have been displaced by Hurricane Katrina and why they are unable to practice in Louisiana.

(4) The applicant must not have been the subject of a disciplinary action in any jurisdiction in which the applicant is, or has been, licensed, and the applicant must not be the subject of a pending investigation in any jurisdiction in which the applicant is, or has been licensed.

(5) The applicant must complete and provide:

(A) The reciprocal application provided by the Texas Funeral Service Commission, and

(B) any supporting documentation as requested or required by the Texas Funeral Service Commission.

(b) A person granted a temporary license under this section shall abide by the Texas Funeral Service Commission rules and regulations that govern the funeral industry in the state of Texas. The granting of a temporary license under this section constitutes limited authority to practice funeral directing and/or embalming in the state of Texas. Violations of the Texas Occupations Code, Chapter 651, or Texas Administrative Code, Title 22, Part 10, Chapters 201, 203, 207, and 209 will subject the temporary license to disciplinary action by the Commission.

(c) A temporary license issued under this section remains in effect for so long as the Governor determines that a state of emergency created by Hurricane Katrina continues to exist, but in no event longer than 120 days, unless extended by the Commission as authorized by law.

(d) The requirement for the licensing fee shall be waived for a temporary license issued under this section.

(e) The examination requirement for the Texas Mortuary Law Exam shall be waived for a temporary license issued under this section.

(f) Licenses issued under this section may not be renewed.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 8, 2005.

TRD-200503965

O.C. Robbins

Executive Director

Texas Funeral Service Commission

Effective Date: September 8, 2005

Expiration Date: January 5, 2006

For further information, please call: (512) 936-2466



PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.14

The Texas Optometry Board adopts on an emergency basis new §273.14, relating to the provisional licensure of Louisiana, Mississippi and Alabama optometrists displaced by Hurricane Katrina.

As authorized by Texas Government Code §2001.034, the agency may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days notice. The agency finds that there is an imminent peril to public welfare due to the number of Louisiana, Mississippi and Alabama optometrists that have been displaced by Hurricane Katrina who desire to temporarily practice in Texas as a means of providing for themselves and their families. On September 1, 2005, Governor Perry issued a proclamation certifying that

Hurricane Katrina had created an emergency disaster and emergency conditions for Texas. An emergency rule adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed once for not longer than 60 days.

The agency's existing rule for provisional license, §273.6 of this title, would prevent many well qualified Louisiana, Mississippi and Alabama licensees from providing for their families based solely on an initial licensure date prior to the widespread recognition of a national optometry licensing exam. Although §273.6 provides for waiving of the sponsorship requirement if there is a finding of a hardship for the applicant, the new rule specifically finds that the emergency disaster has created a hardship for the applicants eligible for the provisional license under this new section. The new section also remove the extra financial burden imposed by the requirement of making a simultaneous application for a full license.

The effective date of the rule is the date of filing with the *Texas Register*.

The new section is adopted on an emergency basis pursuant to §2001.034 of the Government Code, which authorizes the adoption of an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days notice. The new section is also adopted on an emergency basis under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.259.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession, and §351.259 as authorizing the agency to issue provisional licenses.

No other sections are affected by the new section.

§273.14. Provisional License for Louisiana, Mississippi and Alabama Optometrists Affected by Hurricane Katrina.

(a) An individual who is licensed in Louisiana, Mississippi or Alabama may be issued a provisional license under the following circumstances:

(1) The applicant furnishes a verification of state license from each state where licensed. Each verification must state that the license of the applicant has never been revoked or suspended. The verification from the applicant's current practice state of Louisiana, Mississippi or Alabama shall also state that the applicant is in good standing with a current active license and include the level of optometric practice for which the applicant is licensed. A facsimile verification form directly from the state board is acceptable, but original verification must be submitted within a reasonable time.

(2) The applicant provides all information requested by the Board on the application for provisional license.

(3) The applicant states under oath on the provisional license application that:

(A) the applicant has been displaced by Hurricane Katrina and is no longer able to practice optometry in Louisiana, Mississippi or Alabama;

(B) the applicant has read the Texas Optometry Act and the Board Rules;

(C) the applicant will abide by the Texas Optometry Act and the Board Rules;

(D) the applicant will inform the Board of all locations of optometry practice within 14 days of beginning practice in that location; and

(E) the applicant will inform the Board of any change in the applicant's residence address within 14 days of the change.

(4) The applicant submits an application fee of \$75 in the form of a money order or cashier's check.

(b) An applicant granted a provisional license under this section shall abide by the Texas Optometry Act and the Board Rules. The application shall be construed as an application for license. The granting of a provisional license under this section constitutes limited authority to practice optometry in Texas. Violations of the Texas Optometry Act, Board Rules, or the provisional license will subject the licensee to disciplinary action by the board.

(c) A provisional license issued under this section expires 180 days from the date of issuance. The practice of optometry or therapeutic optometry after the license expires constitutes the practice of optometry without a license. The provisional license expires upon issuance of a full license or if the provisional licensee applies for full licensure and fails the Texas Jurisprudence Examination.

(d) A provisional license issued under this section may not be renewed. Applicants may apply for a full license during the time period that a provisional license is held.

(e) A provisional license issued prior to expiration of this emergency rule will remain in effect until the provisional license expires even if the emergency rule is no longer in effect.

(f) Licensees with therapeutic certification in the current state of practice of Louisiana Mississippi or Alabama may practice as therapeutic optometrists as defined by the Texas Optometry Act and Board Rules. The Provisional License authorizes the holder to practice as an Optometric Glaucoma Specialist as defined by §351.358 and §351.3581 of the Act only if certified to treat glaucoma in the current state of practice and that state provides verification of that certification. The provisional license does not authorize the licensee to practice in Texas in a manner not authorized by the current state of practice for that licensee.

(g) This issuance of a provisional license under this section is subject to provisions of §351.501 of the Act.

(h) The issuance of a provisional license does not restrict the Board regarding the issuance of or refusal to issue a full license on application of the provisional licensee.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 8, 2005.

TRD-200503946

Chris Kloeris

Executive Director

Texas Optometry Board

Effective Date: September 8, 2005

Expiration Date: January 5, 2006

For further information, please call: (512) 305-8502

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PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATIONS

22 TAC §371.18

The Texas Board of Podiatric Medical Examiners (Board) adopts, on an emergency basis, new §371.18, relating to the Emergency Provisional Licensure of Louisiana, Mississippi, Alabama and other out-of-state podiatrists who have been displaced by Hurricane Katrina and/or wanting a Texas license to assist the refugee effort (volunteer).

As authorized by Texas Government Code §2001.034, the Board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Board finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days notice. The Board finds that there is an imminent peril to public welfare due to the number of Louisiana, Mississippi, Alabama and other out-of-state podiatrists who have been displaced by Hurricane Katrina and/or wanting a Texas license to assist the refugee effort (volunteer). There is no doubt that many Hurricane Katrina refugees will be suffering from medical issues involving the lower extremities, especially the Foot and Ankle (Trench Foot; Gangrene; Diabetic Complications, Fractures, Wound Care, etc.) due to stagnant water, debris and other deteriorating health conditions resulting from Hurricane Katrina. However, in order to legally and properly treat those individuals and refugees who are coming to Texas, out-of-state podiatrists, upon application, **MUST** have a Texas License and a Texas Sponsor to ensure only qualified person's practice Podiatric Medicine in the State of Texas.

On September 1, 2005, Governor Perry issued a proclamation certifying that Hurricane Katrina had created an emergency disaster and emergency conditions for Texas. An emergency rule adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed once for not longer than 60 days.

The Board's existing rules for provisional licenses, set forth under §371.2(j) of this title, relating to provisional licenses, cannot be applied in this situation where doctors may likely need and desire to practice in Texas for more than 30 days. The Board has no other existing (reciprocity) rules under this title for licensure of certain out-of-state applicants to accommodate the imminent peril to the public health, safety, or welfare caused by Hurricane Katrina.

Under this emergency rule, the Board will issue an emergency provisional license to a podiatric physician who can adequately complete the requisite application for licensure, and can demonstrate that they are licensed in good standing in their home state and that they have a letter of invitation or other document from a sponsoring entity or individual in Texas.

The rule is effective when filed with the *Texas Register*.

Licenses issued under the new section are effective for so long as the Governor determines that a state of emergency continues as a result of Hurricane Katrina, but in no event longer than 120 days, unless extended by the Board as authorized by law.

The new section is adopted on an emergency basis under Texas Government Code §2001.034, relating to emergency rulemaking, and Texas Occupations Code §202.151, relating to rules, §202.251, relating to license required, and §202.260, relating to

provisional licensure. Texas Government Code §2001.034, authorizes the adoption of an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. Texas Occupations Code §202.151 authorizes the board to adopt rules necessary to regulate the practice of podiatry. Section 202.251 requires that a person may not practice podiatry unless the person holds a license issued by the Board. Section 202.260 provides that the Board on application shall grant a provisional license to practice podiatry to an applicant.

No other statutes, articles, or codes are affected by the new section.

§371.18. Emergency Provisional License for Certain Out-of-State Applicants.

(a) On the application for an emergency provisional license relating to Hurricane Katrina, Pages "P1 - P4" and "P8" must be completed to begin practicing immediately.

Figure: 22 TAC §371.18(a)

(b) The applicant shall verify by affidavit the information in the application. The Board may refuse to grant a license to any applicant who knowingly submits false information to the Board.

(c) The filing of an application and tendering a fee to the Board staff shall not in any way obligate the Board to grant an applicant a license until the applicant has been qualified by the Board as meeting the amended minimum statutory and regulatory requirements for licensure during this emergent period.

(d) If the applicant is a Louisiana, Mississippi and/or Alabama Podiatrist, individual hardships to completing the remainder of the application will be considered on a case-by-case basis. However, within 90-days from the date the application is received, every effort must be made to submit all supporting documentation. Applicants are required to contact the Board to assist them with this process.

(e) All applicants are required to have a qualified licensed Texas D.P.M. as a sponsor. Applicants may contact the Texas Podiatric Medical Association at (512) 494-1123 to obtain a sponsor. The TPMA has a list of Podiatrists willing to assist. Sponsors are required to submit a letter to the Board indicating sponsorship. Sponsors have to be in good standing with the T.S.B.P.M.E. and cannot be under investigation.

(f) The \$125.00 Application Fee has been waived for applicants from Louisiana, Mississippi and Alabama. All other out-of-state applicants are required to submit the \$125.00 Application Fee via Check or Money Order, no cash payments will be accepted.

(g) Practicing Podiatric Medicine in the State of Texas Without a License is a CRIME and subject to CRIMINAL PENALTIES pursuant to Texas Occupations Code §202.605.

(h) All applicants for licensure are subject to criminal background checks through the Texas Department of Public Safety. Federal Bureau of Investigation fingerprint background checks and the associated \$39.00 fee have been waived due to the length of time needed for processing, per the September 1, 2005 Proclamation. After the 180-day expiration and pursuant to permanent licensure, applicants will be mailed a set of fingerprint cards to be completed at any local law enforcement agency. Once completed, those cards are to be returned to the Board for processing. To prevent unnecessary processing delays, it is imperative applicants complete fingerprints in a timely manner and submit them to the Board for final processing. Incomplete

or poor quality fingerprints will result in rejections and the process will restart to obtain quality fingerprints.

(i) The Board will conduct NPDB-HIPDB background checks of all emergency provisional license applications; those associated costs will be absorbed by the Board.

(j) The Board reserves the right to immediately Suspend or Cancel an emergency provisional license at any time for any violation of the Laws and Rules regulating Podiatric Medicine in the State of Texas, any other State Law, and/or if there is a risk posed to the public health, safety and welfare by the actions of a license holder.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 8, 2005.

TRD-200503968

Janie Alonzo

Administrative Assistant

Texas State Board of Podiatric Medical Examiners

Effective Date: September 8, 2005

Expiration Date: January 5, 2006

For further information, please call: (512) 305-7000



PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.51

The Texas Board of Professional Land Surveying (Board) adopts, on an emergency basis, a new rule to this title, §661.51, relating to the emergency licensure of surveyors displaced by Hurricane Katrina. As authorized by Texas Government Code §2001.034, the Board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Board finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days notice. An emergency rule adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed once for not longer than 60 days.

The Board finds that there is an imminent peril to public welfare due to the number of surveyors from Alabama, Louisiana, and Mississippi who have been displaced by Hurricane Katrina and who desire to temporarily practice in Texas as a means of providing for themselves and their families. On September 1, 2005, Governor Perry issued an executive order certifying that Hurricane Katrina had created an emergency disaster and emergency conditions for Texas. On September 9, 2005, the Board held an emergency teleconference at 10:00 a.m. to consider this emergency rule. A quorum of the Board was unable to convene in one location on the short notice required to address this emergency and public necessity.

Due to the emergency and public necessity, the Board waives certain requirements and fees for reciprocal licenses as set forth under Chapter 661, Subchapter D, of this title, relating to applications, examinations, and licensing. This emergency rule is effective September 9, 2005, and will remain in effect until January 6, 2006, unless the Board authorizes the Executive Director to extend the emergency rule for an additional 60 days.

This emergency rule is proposed under Texas Government Code §2001.034, relating to emergency rulemaking, and Texas Occupations Code §1071.151, relating to rulemaking authority, and §1071.259, relating to registration of out-of-state surveyors. Texas Government Code §2001.034, authorizes the adoption of an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. Texas Occupations Code §1071.151 authorizes the board to adopt and enforce reasonable and necessary rules and bylaws to perform its duties under the Professional Land Surveying Practices Act, Texas Occupations Code Chapter 1071, and to establish standards of conduct and ethics for land surveyors. Section 1071.259 authorizes the Board to waive any registration requirement for an applicant who holds a license from another state having registration or licensing requirements substantially equivalent to the registration requirements of Texas. The emergency rule has been reviewed by legal counsel and is within the Board's authority to adopt.

No other statutes, articles, or codes are affected by this emergency rule.

§661.51. Emergency Licensure of Surveyors Displaced by Hurricane Katrina.

(a) An individual who is licensed in the states of Alabama, Louisiana, or Mississippi may, upon application and proper documentation, be issued an emergency license under the following circumstances:

(1) Applicant is currently licensed as a Professional Surveyor, is in good standing, and has no current or pending disciplinary actions in the states of Louisiana, Mississippi, or Alabama;

(2) Applicant is unable to continue to practice or reside in Louisiana, Mississippi, or Alabama as a result of Hurricane Katrina; and

(3) Applicant has submitted to the board in writing an emergency application described in this section.

(b) An emergency application shall consist of the following items:

(1) emergency application form;

(2) verification of current licensure from home jurisdiction;

(3) verification of current disciplinary status from home jurisdiction; and

(4) verification of inability to continue to practice or reside in Louisiana, Mississippi, or Alabama as a result of Hurricane Katrina.

(c) Any fee described under §661.47(d) of this title, relating to reciprocal registration, is waived.

(d) Upon approval of the application the applicant will be allowed to sit for the Reciprocal Examination.

(e) Upon passing the Reciprocal Examination, the Fee Increase as required under Texas Occupations Code §1701.1521, relating to fee increase, for issuance of a certificate of registration is waived. Subsequent renewals of any certificates of registration issued under this emergency rule will be subject to the fee increase.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 9, 2005.

TRD-200503986

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Effective Date: September 9, 2005

Expiration Date: January 6, 2006

For further information, please call: (512) 452-9427

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER H. LICENSE SUSPENSION

1 TAC §§55.202 - 55.205, 55.207, 55.208, 55.212, 55.214, 55.215

The Office of the Attorney General proposes to revise Subchapter H, §§55.202 - 55.205, 55.207, 55.208, 55.212, 55.214, and 55.215 concerning license suspension. The rules are being revised to effectuate the interagency contract between the OAG and SOAH to delegate functions for license suspension cases for non-payment of child support.

Section 55.202(6) clarifies that the Office of the Attorney General is the Title IV-D agency.

Section 55.202(7) adds a new term and definition: Administrative Law Judge.

Section 55.203 revises the forms used in license suspension.

Section 55.204(a), (b), and (c) changes Office of the Administrative Law Judge to Office of the Attorney General.

Section 55.205(a) changes Office of the Administrative Law Judge to Office of the Attorney General.

Section 55.205(c) deletes the old subsection language and renumbers the subsection.

Section 55.205(d) clarifies the process for Issuance of Notice of Filing of Petition to Suspend License.

Section 55.205(e) and (f) are renumbered.

Section 55.205(g) deletes subsection.

Section 55.207(b) deletes Office of the Administrative Law Judge and adds an administrative law judge from the State Office of Administrative Hearings.

Section 55.208(a) deletes Office of the Administrative Law Judge and adds an administrative law judge from the State Office of Administrative Hearings.

Section 55.212 changes Office of the Administrative Law Judge to Office of the Attorney General.

Section 55.214(a) and (b) deletes Title IV-D agency and adds Coordinator.

Section 55.215 (b) deletes obsolete language that expired in 1996.

Alicia Key, Director, Child Support Division, has determined that for the first five years these revised sections as proposed are in effect, there will be no significant fiscal implications for state or local government.

Ms. Key has also determined that for the first five years these revised sections as proposed are in effect, there will be no significant fiscal implications for small businesses or individuals.

Ms. Key has also determined that for each year of the first five years the sections are in effect, the public benefit as a result of these revised sections will be improved processing of license suspension cases.

Ms. Key has also determined that there will be no local employment impact as a result of these revised sections.

Comments on these proposed sections should be submitted to Carol Campbell, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Austin, Texas 78711-2017.

The revised sections are proposed under the authority of Texas Family Code §232.016.

§55.202. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Oblige--The person to whom child support is due.
- (2) Obligor--The person who owes child support.
- (3) Parties--The parties to a Chapter 232 hearing are the petitioner, the obligor, and the designated representative of the Title IV-D agency in a Title IV-D case.
- (4) Petitioner--The party filing the Petition to Suspend License; the petitioner may be the designated representative of a child support agency, or the obligee, either personally or through his or her representative.
- (5) Representative--An attorney licensed in the State of Texas or another state or a Certified Public Accountant licensed in the State of Texas or another state.
- (6) Title IV-D agency--The Office of the Attorney General is the agency designated by Texas law to perform the functions and provide the services required by Title IV-D of the Social Security Act.
- (7) Administrative Law Judge--Includes an administrative law judge of the State Office of Administrative Hearings or any other administrative law judge designated by the Title IV-D Director or the Director's designee.

§55.203. *Forms.*

(a) Notice of Filing of Petition to Suspend License. The notice shall take the form as follows:

Figure: 1 TAC §55.203(a)

(b) Petition to Suspend License. The petition shall take the form as follows:

Figure: 1 TAC §55.203(b)

(c) Request for Hearing. The request shall take the form as follows:

Figure: 1 TAC §55.203(c)

(d) Notification to Licensing Authority of Order Suspending License.

Figure: 1 TAC §55.203(d)

(e) Notification of Licensing Authority of Order Vacating or Staying Order Suspending License.

Figure: 1 TAC §55.203(e)

(f) Suggested model forms for use by the Courts.

Figure: 1 TAC §55.203(f) (No change.)

§55.204. *Coordinator.*

(a) The coordinator may be contacted at: (512) 460-6046, Office of the Attorney General~~[Office of the Administrative Law Judge]~~, Child Support Division, ~~[Office of the Attorney General]~~, 5500 E. Olton, Austin, Texas 78741 (hand delivery); P.O. Box 12017, Mail Code 039-3, Austin, Texas 78711-2017 (Postal Service delivery).

(b) The coordinator's office will be open from 8:00 a.m. to 5:00 p.m., Monday through Friday. The coordinator's office will be closed on those days specified as holidays in Government Code, §662.003.

(c) Questions to the Office of the Attorney General ~~[Administrative Law Judge]~~ must be directed to the coordinator. ~~[Written inquiries to the Office of the Administrative Law Judge must be served on all parties to the proceeding.]~~

(d) Documents and pleadings shall be deemed filed only when actually filed marked with the official stamp of the Coordinator, ~~Office of the Attorney General.~~~~[Office of the Administrative Law Judge.]~~

§55.205. *Initiating a Proceeding.*

(a) Filing the Petition. The petitioner initiates a proceeding by filing the Petition to Suspend License packet with: Coordinator, Office of the Attorney General~~[Administrative Law Judge]~~, Child Support Division, ~~[Office of the Attorney General]~~, 5500 E. Olton, Austin, Texas 78741 (hand delivery); P.O. Box 12017, Mail Code 039-3, Austin, Texas 78711-2017 (Postal Service delivery).

(b) Petition to Suspend License Packet. The packet is the Notice of Filing Petition to Suspend License, with all attachments, including the Petition to Suspend License, Request for Hearing, all relevant court orders and payment records.

(c) Issuance of Notice of Filing of Petition to Suspend License. After determining that the packet is complete, the coordinator will assign a docket number to the petition, seal the notice, and file-stamp the notice and petition.~~[Number of Copies: The original of the packet must be filed with the coordinator. The coordinator must be supplied with an additional copy of the packet, including the Notice of Filing of Petition to Suspend License to be served on the obligor.]~~

(d) Service. The petitioner is responsible for obtaining service of the notice on the obligor as in civil cases generally. See Texas Rule of Civil Procedure 106.~~[Issuance of Notice of Filing of Petition to Suspend License: After determining that the packet is complete and that sufficient copies of the packet have been tendered, the coordinator~~

will assign a docket number to the petition, seal the notice, file-stamp the notice and petition, and return the docketed, sealed and file-stamped copies to the petitioner.]

(e) Evidence of Service. Upon obtaining service on the obligor, the petitioner must file evidence with the coordinator that service has been obtained. A copy of the return of service or a copy of the return receipt on certified mail is evidence that service has been obtained.~~[Service: The petitioner is responsible for obtaining service of the notice on the obligor as in civil cases generally. See Texas Rule of Civil Procedure 106.]~~

~~[(f) Evidence of Service: Upon obtaining service on the obligor, the petitioner must file evidence with the coordinator that service has been obtained. A copy of the return of service or a copy of the return receipt on certified mail is evidence that service has been obtained.]~~

~~[(g) Title IV-D Agency: If the petitioner is not the Title IV-D agency, the petitioner must provide copies of the packet and all pleadings and documents to: License Suspension Prosecutor, Child Support Division, Office of the Attorney General, 5500 E. Olton, Austin, Texas 78741 (hand delivery); P.O. Box 12017, Mail Code 073, Austin, Texas 78711-2017.]~~

§55.207. *Pre-hearing Matters.*

(a) Not later than 20 days prior to the hearing, each party shall file with the coordinator, and serve on the other parties, a list of witnesses the party will call at the hearing and copies of any supplemental documentary evidence, not previously filed with the coordinator, to be offered into evidence at the hearing.

(b) Objections to documentary evidence must be in writing and filed with the coordinator not later than 10 days prior to the hearing. An administrative law judge, including an administrative law judge of the State Office of Administrative Hearings~~[designated by the Office of the Administrative Law Judge, Child Support Division, Office of the Attorney General]~~, may convene a pre-hearing conference on the evidentiary objections to rule on the objections, or shall rule on the objections at the hearing.

(c) Not later than ten days prior to the hearing, the coordinator will compile and transmit to the parties a petitioner's evidentiary packet and an obligor's evidentiary packet. The respective packets will contain the list of witnesses and any supplemental documentary evidence submitted pursuant to subsection (a) above to be offered by the respective party.

(d) A party must obtain permission of the administrative law judge to supplement the list of witnesses or documentary evidence if submitted less than 20 days prior to the hearing. Objections to such evidence shall be resolved at the hearing.

§55.208. *Conduct of the Hearing.*

(a) An administrative law judge, including an administrative law judge of the State Office of Administrative Hearings~~[designated by the Office of the Administrative Law Judge, Child Support Division]~~, shall preside at the hearing on the petition.

(b) The petitioner is entitled to open and close at the hearing.

§55.212. *Decision.*

Following the conclusion of the hearing, the administrative law judge, including an administrative law judge of the State Office of Administrative Hearings as the designee of the director of the Title IV-D agency, will issue a decision and final order.

§55.214. *Notification to the Licensing Authority.*

(a) The Coordinator~~[Title IV-D agency]~~ will transmit the final order suspending license to the licensing authority as soon as the final

order is enforceable. The ~~Coordinator~~~~[Title IV-D agency]~~ will transmit the final order using the Notification to Licensing Authority of Order Suspending License form promulgated as a part of this subchapter.

(b) The ~~Coordinator~~~~[Title IV-D agency]~~ will transmit the order vacating or staying order suspending license to the license authority as soon as it is effective. The ~~Coordinator~~~~[Title IV-D agency]~~ will transmit the order using the Notification to Licensing Authority of Order Vacating or Staying Order Suspending License form promulgated as a part of this subchapter.

§55.215. Prerequisites for Suspension of Licenses Relating to State Taxes.

(a) Each petition seeking to suspend a license relating to state taxes shall list each license to be suspended by license type and, if applicable, by license number.

(b) An order suspending a license issued pursuant to the Tax Code, §155.041, shall be served on the agency issuing the license. ~~[Through August 31, 1996, the agency issuing the license shall notify the Comptroller of Public Accounts of the receipt of the order. After August 31, 1996, the]~~ The order shall be issued directly to the Comptroller of Public Accounts.

(c) An order suspending a license relating to state taxes must be served on each licensing authority which issued a license suspended by the order.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200504003

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Earliest possible date of adoption: October 23, 2005

For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.



PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 104. WRESTLING PROMOTERS

1 TAC §104.1, §104.10

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of the Secretary of State proposes the repeal of Chapter 104, §104.1 and §104.10, concerning Wrestling Promoters. SB 796 enacted by the 79th Regular Legislative Session eliminated Wrestling Promoter registration. Consequently, effective September 1, 2005, Chapter 104 is no longer relevant.

Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local governments. There is no effect on large businesses,

small businesses or micro-businesses. There is no anticipated additional economic cost to individuals as a result of the repeals. There is no anticipated impact on local employment.

Mr. Joyner also has determined that for each year of the first five years the repeals are in effect the public benefit will be the elimination of rules that are no longer applicable.

Comments on the proposal may be submitted to Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

The repeals are proposed under the Texas Government Code, §2001.004(1) which provides the Secretary of State with the authority to prescribe and adopt rules.

No other code, article or statute is affected by the proposed repeals.

§104.1. Registration of Wrestling Promoter.

§104.10. Filing Fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 9, 2005.

TRD-200503979

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: October 23, 2005

For further information, please call: (512) 475-0775



CHAPTER 105. SOLICITATIONS SUBCHAPTER C. TELEPHONE SOLICITATIONS

1 TAC §105.209

The Office of the Secretary of State proposes an amendment to §105.209, concerning filing fees. The purpose of the amendment is to update the rule to reflect the increase in the fee for official certificates authorized in Senate Bill 1377 which was enacted by the 79th Regular Legislative Session.

Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section has determined that for the first five year period that the proposed amendment is in effect there will be no fiscal implications for state or local governments as a result of enforcing the amendment. The amendment has no effect on large businesses, small businesses or micro-businesses. There is no anticipated additional economic cost to individuals who are required to comply with the amendment as proposed. The increase in the fee was mandated in Senate Bill 1377, and this amendment simply amends the rule to reflect the correct fee. There is no anticipated impact on local employment.

Mr. Joyner also has determined that for each year of the first five years that the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the clarification of the fee for official certificates issued for additional telephone solicitor locations.

Comments on the proposed amendment may be submitted to Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

The amendment is proposed under the Texas Government Code, §2001.004(1) which provides the Secretary of State with the authority to prescribe and adopt rules.

The amendment affects §38.101 of the Texas Business and Commerce Code.

§105.209. Filing Fees.

(a) The filing fee for a registration statement is \$200. This fee includes one certificate of registration for one location. If the telephone solicitation seller uses one registration statement to register more than one business location, there is a fee of \$15 [~~\$10~~] for each additional certificate of registration.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200504018

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: October 23, 2005

For further information, please call: (512) 475-0775



PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.2

The Department of Information Resources (department) proposes to amend §201.2, concerning procedures for complaints, vendor protests and the negotiation and mediation of certain contract disputes and bid submission, opening and tabulation procedures. Changes are proposed only to §201.2(b), which is the vendor protest procedure. The existing rule directs the executive director of the department to establish procedures for vendor protest resolution and states that the procedures are published on the department website. The amended rule removes the citation to the website and contains the entire vendor protest procedure within subsection (b). This change is consistent with §2155.076, Texas Government Code.

Section 201.2(b)(1) of the amended rule provides that formal protests may be submitted, in writing, to the service delivery division director of the department, or his or her designee, within ten working days after the aggrieved knows, or should know, of the occurrence of the protested action. Requirements for the protests are set forth. Section 201.2(b)(2) provides that in instances where a timely protest is filed and an award has not been made, the department shall not proceed further with the solicitation or award unless the executive director, after consultation

with the appropriate division director and the service delivery division director, or his or her designee if one was designated under §201.2(b)(1) makes a written determination that the award of contract without delay is necessary to protect substantial interests of the state.

Section 201.2(b)(3) of the amended rule sets forth the requirements for the content of the protest and requires that each protest be sworn to. Section 201.2(b)(4) of the amended rule authorizes the service delivery division director, or his or her designee, to resolve the dispute before it is appealed to the executive director, or his or her designee. Under §201.2(b)(5) of the amended rule, the service delivery division director, or his or her designee, may solicit written responses to the protest from respondents who have submitted bids, proposals or offers for the contract involved and from other interested parties. Section 201.2(b)(6) authorizes the service delivery division director, or his or her designee, to consult with legal counsel concerning the dispute. If the dispute is not otherwise resolved, §201.2(b)(7) of the amended rule requires the service delivery division director, or his or her designee, to issue a written determination of the protest. Section 201.2(b)(8) establishes the procedure by which the determination can be appealed to the executive director or his or her designee. The existing protest procedure does not allow the executive director to delegate responsibility to consider protest appeals. The department is proposing this change to provide flexibility to the executive director so that he or she can decide not to consider an appeal in instances where doing so might appear biased. Appeals under this subsection must be written and must be received by the executive director's office within ten working days after the date of the determination by the service delivery division director, or his or her designee.

Sections 201.2(b)(9), (10) and (11) authorize the executive director, or his or her designee, to confer with legal counsel in reviewing the appeal, review the protest petition and any requests for, and written responses to, the protest petition from any respondent or other interested party, and to refer the matter to the board of the department to be considered at a regularly scheduled open meeting. Section 201.2(b)(11) of the amended rule also provides that if a matter is not referred to the board by the executive director, or his or her designee, it is final. Section 201.2(b)(12) of the amended rule sets forth requirements that pertain to appeals made under §201.2(b)(8). Section 201.2(b)(13) requires board determinations be adopted by resolution, and §201.2(b)(14) provides that, generally, protests and appeals that are not timely filed will not be considered. Finally, §201.2(b)(15) of the amended rule provides that, absent a timely appeal, a decision issued by board, or in writing by the executive director, or his or her designee, or the service delivery division director, or his or her designee, is the final action of the department concerning the protest.

Mr. Brian Rawson, service delivery division director for the department, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing the amendments.

Mr. Brian Rawson, service delivery division director, has determined that for the first five-year period the public will benefit from having a rule that clearly establishes vendor protest procedures. The costs to the public of the adoption of the amended rule are not different than the costs experienced currently by any vendor who protests a department bid or contract. The costs to individuals and small business are not different than they are to other

businesses nor or they different than the costs under the existing rule.

Comments on the proposed amendment may be submitted to Renée Mauzy, general counsel, via mail to P. O. Box 13564, Austin, Texas 78711-3564, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days after publication.

The amendments are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules to implement its responsibility under chapter 2054, and §2155.076, Texas Government Code, which requires each state agency to develop and adopt vendor protest resolution procedures by rule.

Section 2155.076, Texas Government Code, is affected by the amended rule.

§201.2. Procedures for Complaints, Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures.

(a) (No change.)

(b) Vendor Protest Procedure.

(1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Service Delivery Division director, or his or her designee. Such protests must be in writing and received in the director's office within 10 working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements of this subsection and paragraph (3) of this subsection, and shall be resolved in accordance with the procedure set forth in paragraphs (4) and (5) of this subsection. Copies of the protest must be mailed or delivered by the protesting party to the department and all respondents who have submitted bids, proposals or offers for the contract involved. Names and addresses of such respondents may be obtained by sending a written request for the information to the purchasing manager of the department.

(2) In the event of a timely protest under paragraph (1) of this subsection, and an award has not been made, the department shall not proceed further with the solicitation or award of the contract unless the executive director, after consultation with the appropriate division director and the Service Delivery Division director, or his or her designee if one was designated under paragraph (1) of this subsection, makes a written determination that the award of contract without delay is necessary to protect substantial interests of the state.

(3) A formal protest must be sworn and contain:

(A) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(B) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in subparagraph (A) of this paragraph;

(C) a precise statement of the relevant facts;

(D) an identification of the issue(s) to be resolved;

(E) argument and authorities in support of the protest;

and

(F) a statement that copies of the protest have been mailed or delivered to all respondents who have submitted bids, proposals or offers for the contract involved.

(4) The Service Delivery Division director, or his or her designee if one was designated under paragraph (1) of this subsection, shall have the authority, prior to appeal to the executive director of the department, or his or her designee, to settle and resolve the dispute concerning the solicitation or award of a contract.

(5) The Service Delivery Division director, or his or her designee, may solicit written responses to the protest from respondents who have submitted bids, proposals or offers for the contract involved and from other interested parties. Upon written request, the protesting party shall be given notice of the director's request and any written responses received.

(6) The Service Delivery Division director, or his or her designee if one was designated under paragraph (1) of this subsection, may consult with legal counsel concerning the dispute.

(7) If the protest is not resolved by mutual agreement, the Service Delivery Division director, or his or her designee if one was designated under paragraph (1) of this subsection, will issue a written determination on the protest.

(A) If the Service Delivery Division director, or his or her designee, determines no violation of rules or statutes occurred, he or she shall so inform the protesting party and each respondent who submitted a bid, proposal or offer for the contract involved by letter. The letter shall set forth the reasons for the determination.

(B) In instances in which the contract has not been awarded, if the Service Delivery Division director, or his or her designee, determines that a violation of the rules or statutes has occurred, he or she shall so inform the protesting party and each respondent who submitted a bid, proposal or offer for the contract involved by letter. The letter shall set forth the reasons for the determination and the appropriate remedial action.

(C) In instances in which the contract has been awarded, if the Service Delivery Division director, or his or her designee, determines that a violation of the rules or statutes has occurred, he or she shall so inform the protesting party and each respondent who submitted a bid, proposal or offer for the contract by letter. The letter shall set forth the reasons for the determination and may conclude that the contract awarded is void.

(8) The determination of the Service Delivery Division director, or his or her designee, on a protest may be appealed by the protesting party to the executive director of the department or his or her designee. An appeal of the determination of the Service Delivery Division director, or his or her designee, must be written and must be received in the executive director's office no later than 10 working days after the date of the determination. The appeal shall be limited to review of the determination. A copy of the appeal must be mailed or delivered by the appealing party to the department and each respondent who submitted a bid, proposal or offer for the contract and must contain a certified statement that such copies have been provided. Failure of the protesting party to appeal the determination of the Service Delivery Division director, or his or her designee, within 10 working days after the date of the determination renders the determination the final administrative action of the department on the protest.

(9) The executive director, or his or her designee, may confer with legal counsel in reviewing the matter appealed.

(10) The executive director, or his or her designee, shall review the protest petition, any requests for and written responses to the protest petition from any respondent who submitted a bid, proposal or offer for the contract or other interested parties, the determination and the appeal.

(11) The executive director, or his or her designee, may refer the matter to the board for consideration at a regularly scheduled open meeting or issue a written decision on the protest. If the matter is not referred to the board by the executive director, or his or her designee, the decision of the executive director, or his or her designee, is final.

(12) When a protest appealed under paragraph (8) of this subsection has been referred to the board under paragraph (11) of this subsection:

(A) Copies of the documents required by paragraph (10) of this subsection shall be mailed to the board.

(B) All interested parties who wish to make an oral presentation at the open meeting at which the board is scheduled to consider the protest shall notify the department general counsel at least 48 hours in advance of the open meeting.

(C) The board may consider oral presentations and written documents presented by staff and interested parties, including the protesting party and any respondent who submitted a bid, proposal or offer for the contract. The board chair shall set the order and length of time allowed for presentations.

(13) Board determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting, and shall be final.

(14) Unless good cause for delay is shown or the board determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(15) A decision issued by the board in open meeting, or in writing by the executive director, or his or her designee, or in writing by the Service Delivery Division director, or his or her designee, that is not appealed in a timely manner, shall be the final administrative action of the department.

{(b) The executive director is hereby directed to maintain protest procedures for resolving vendor protests relating to purchasing issues. The procedures must be consistent with applicable state law and with the rules of the Texas Building and Procurement Commission relating to vendor protests, and must include standards for maintaining documentation about the purchasing process to be used in the event of a protest. The procedures are published on the world wide web at the following location: www.dir.state.tx.us/vendorprotest.htm.}

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200504002

Renée Mauzy

General Counsel

Department of Information Resources

Earliest possible date of adoption: October 23, 2005

For further information, please call: (512) 936-6448



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.501

The Health and Human Services Commission (HHSC) proposes an amendment to §355.501, concerning the reimbursement methodology for Program for All-Inclusive Care for the Elderly (PACE), in Chapter 355, Reimbursement Rates.

Background and Purpose

The purpose of the amendment is to revise the calculation of the upper payment limit and the associated payment rate for each PACE contract for clients who are eligible for Medicare services and Medicaid services (i.e., dual-eligible clients) to exclude the historical cost of any prescription medication that is in a category covered by Medicare Part D.

HHSC proposes this amendment in response to new federal requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Beginning January 1, 2006, individuals, including PACE clients, who are eligible for both Medicare and Medicaid services (i.e., dual-eligible clients) must obtain prescription drugs through a Medicare Part D prescription drug plan rather than through Medicaid.

Under MMA, Medicaid funds must not be used to pay for a prescription drug for a person who is eligible for Medicare Part D benefits, if that drug is in a category of drugs that is covered by Medicare Part D.

Section-by-Section Summary

No changes are being proposed to subsections (a), (b), (d), and (f).

Subsection (c) is amended to exclude prescription costs from the calculation of the upper payment limit and the associated payment rate, for each PACE contract, for dual-eligible clients effective January 1, 2006, in accordance with federal regulations at 42 CFR §423.906, General Payment Provisions.

Minor grammatical changes are being made to subsection (e).

Fiscal Note

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that the general revenue savings to the Department of Aging and Disability Services are as follows: approximately \$1,281,688 for fiscal year 2006, approximately \$2,174,407 in fiscal year 2007, and approximately \$2,175,507 each year for the fiscal years 2008-2010. There will be no effect to local governments.

Small Business and Micro-Business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses, or on businesses of any size, as a result of enforcing or administering the amendment. While the amendment changes the historical prescription costs included in the calculation of the upper payment limit and associated payment rate for dual-eligible clients for each PACE contract, it does not actually change any payment rates.

Cost to Persons and Effect on Local Economies

HHSC does not anticipate an economic cost to persons who are required to comply with this amendment. The amendment will not affect a local economy.

Public Benefit

Ed White, Director of Rate Setting and Forecasting, has determined that for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that HHSC will be in compliance with the MMA and associated federal regulations.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Public Comment

Written comments on the proposal may be submitted to Lesa Ledbetter at Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas, by fax to (512) 491-1953, or by e-mail to lesa.ledbetter@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

To comply with federal regulations, a copy of the proposal is being sent to each Department of Aging and Disability Services office, where it will be available for public review upon request.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties, and §531.021(b), which established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

This amendment implements the Government Code, §531.033 and §531.021(b).

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.501. *Reimbursement Methodology for Program for All-Inclusive Care for the Elderly (PACE).*

(a) - (b) (No change.)

(c) Upper payment limit determination. There are three upper payment limits calculated for each PACE contract: one for clients eligible only for Medicaid services (Medicaid-only clients), one for clients eligible for both Medicare and Medicaid services (dual-eligible clients), and one for clients eligible for only Medicare services as Qualified Medicare Beneficiaries (QMBs). An average monthly historical cost per client receiving nursing facility and Community Based Alternatives (CBA) services under the fee-for-service payment system is calculated for the counties served by each PACE contract for the upper payment limits for Medicaid-only clients and for dual-eligible clients.

(1) - (3) (No change.)

(4) Effective on and after January 1, 2006, the historical prescription costs from subparagraph (B) of this paragraph that are used in the calculation of the upper payment limit, and as such the associated payment rate, for dual-eligible clients for each PACE contract will exclude the costs of any drug that is in a category covered by Medicare Part D.

(5) [(4)] To determine an average monthly historical cost for the counties served by each PACE contract, the total historical fee-for-service claims data for the counties served by each PACE contract

are divided by the number of member months for the counties served by each PACE contract.

(6) [(5)] A per member month amount is added to the average monthly historical cost per client. The per member month amount is added for:

(A) processing claims, based on the state's cost to process claims under the fee-for-service payment system; and

(B) case management, based on the state's cost to provide case management under the fee-for-service [~~fee-for service~~] payment system for CBA clients.

(7) [(6)] The sum of the average monthly historical cost per client for each PACE contract and the amounts from paragraph (5) of this subsection are projected from the claims data base period identified in paragraph (1) of this subsection to the rate period to account for anticipated changes in costs for each PACE contract. The methodology used for trending historical costs for calculating PACE UPLs and rates is comparable to that used for trending fee-for-service costs.

(d) (No change.)

(e) Payment rate determination. There are three reimbursement rates calculated for each PACE contract: one for clients eligible only for Medicaid services, one for clients eligible for both Medicare and Medicaid services, and one for clients eligible for only Medicare services as Qualified Medicare Beneficiaries (QMBs). The payment rates for the three client categories for each PACE contract are determined by multiplying the upper payment limits calculated for each PACE contract by 0.95.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 9, 2005.

TRD-200503987

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: October 23, 2005

For further information, please call: (512) 424-6900

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS PLANTS

SUBCHAPTER R. FORMOSAN TERMITE QUARANTINE

4 TAC §§19.180 - 19.183

The Texas Department of Agriculture (the department) proposes new §§19.180 - 19.183, concerning a quarantine for the Formosan subterranean termite, *Coptotermes formosanus* Shiraki. The quarantine is proposed to slow the spread of this pest in

the State. The new sections prescribe specific restrictions on the movement of quarantined articles. In Texas, the Formosan subterranean termite was first detected in 1956 at a shipyard in Pasadena. According to the Texas A&M University, currently there are 23 counties in Texas that have been positively identified as having an infestation of the Formosan subterranean termite. Furthermore, infested railroad cross ties have been identified as the major pathway for the artificial spread of this pest. The department believes that by placing restrictions on the movement of quarantined articles from the infested counties of Texas and other states will delay the spread of this termite into free areas of Texas.

Section 19.180 defines the quarantined pest. Section 19.181 lists the Formosan subterranean termite-infested counties in Texas and other states. Section 19.182 describes the quarantined articles, and §19.183 prescribes requirements for movement of the quarantined articles from the quarantined area to a free area. The department believes that it is necessary to take this action to reduce spread of the Formosan subterranean termite into free areas of Texas.

Dr. Shashank Nilakhe, State Entomologist, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the new sections.

Dr. Nilakhe has also determined that for each of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be reduction in the spread of this termite due to manmade activities. There will be a treatment cost to small and/or micro businesses that move quarantined articles from the quarantined area to free area. In order to comply with the new sections, businesses that are covered by the quarantine may be required to treat quarantined articles by fumigation or another means prescribed by the department. The cost of treatment will depend on the volume of quarantined articles moved from infested counties to non-infested counties and the method of treatment prescribed. Consequently, the specific cost to the impacted businesses cannot be determined at this time.

Comments on the proposal may be submitted to Dr. Shashank Nilakhe, State Entomologist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code) §71.002, which provides the department with the authority to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; the Code, §71.003, which provides the department with the authority to declare an area pest-free and quarantine surrounding areas if it determines that an insect pest or plant disease of general distribution in this state does not exist in an area; and the Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a specific treatment of quarantined articles.

The Code affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.180. Quarantined Pest.

The quarantined pest is the Formosan subterranean termite, *Coptotermes formosanus* Shiraki.

§19.181. Quarantined Areas.

The quarantined areas are:

- (1) Alabama counties: Baldwin, Calhoun, Jefferson, Lee, and Mobile;
- (2) California counties: San Diego;
- (3) Florida: Entire state;
- (4) Georgia counties: Chatham, Cobb, DeKalb, Fayette, Gwinnett, and Paulding;
- (5) Hawaii: Entire state;
- (6) Louisiana parishes: Ascension, Assumption, Beauregard, Calcasieu, Cameron, East Baton Rouge, Iberia, Iberville, Jeff Davis, Jefferson, Lafayette, Lafourche, Orleans, Plaquemines, Quachita, St. Bernard, St. Charles, St. James, St. John, St. Martin, St. Mary, St. Tammany, Terrebonne, Vermillion, Washington, and West Baton Rouge;
- (7) Mississippi counties: Adams, Amite, Covington, Forrest, George, Greene, Hancock, Harrison, Hinds, Jackson, Jasper, Jones, Lamar, Lauderdale, Lincoln, Madison, Marion, Pearl River, Perry, Pike, Rankin, Smith, Stone, Walthall, and Wilkinson;
- (8) North Carolina counties: Brunswick and Rutherford;
- (9) South Carolina counties: Beaufort, Berkeley, Charleston, Dorchester, Orangeburg, and York;
- (10) Texas counties: Angelina, Aransas, Bexar, Brazoria, Cameron, Collin, Colorado, Dallas, Denton, Galveston, Gregg, Henderson, Hidalgo, Harris, Jefferson, Liberty, Nueces, Orange, Polk, Rockwall, Smith, Tarrant, and Travis.

§19.182. Quarantined Articles.

The quarantined articles are:

- (1) any stage of development of the Formosan termite, *Coptotermes formosanus* Shiraki;
- (2) used railroad cross ties; and
- (3) any other products, articles, or means of conveyance of any character whatsoever, not covered by paragraphs (1) and (2) of this section, are quarantined articles when it is determined that they present a hazard of spread of the Formosan termite and the person in possession thereof has been so notified.

§19.183. Restrictions.

- (a) General. Quarantined articles originating from quarantined areas are prohibited entry into or through the free areas of Texas, except as provided in subsections (b) and (c) of this section.
- (b) Exemptions. Movement of regulated articles used for experimental and scientific purposes is exempt from these rules provided the researcher obtains a permit from the department.
- (c) Exceptions. Quarantined articles from any quarantined area of this state or any state are allowed entry into or through the free areas of Texas provided that the articles:

- (1) are free of the Formosan termite in any stage of development; or
- (2) were fumigated or treated in another manner prescribed by the department and proof of the treatment accompanies the articles.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 9, 2005.

TRD-200503991

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: October 23, 2005

For further information, please call: (512) 463-4075



PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.3, §51.13

The Texas Animal Health Commission (commission) proposes amendments to Chapter 51, entitled, "Entry Requirements," §51.3, Exceptions and §51.13, Equine. The amendments are in regards to entry requirements for equine.

The rules of the Commission require all livestock entering Texas have a certificate of veterinary inspection (CVI) and a permit issued by the Commission, unless specifically exempted. A permit is obtained from the Commission by calling a number 24 hours a day and providing them your contact information then you will be given a number to identify as having obtained a permit. For equine entering Texas there is an exception for entering without a CVI if moved directly to a veterinary clinic for treatment or for usual veterinary procedures when accompanied by a permit issued by the Commission. The Commission also has a requirement that equine entering Texas have a current, equine infectious anemia (EIA) test within the last twelve (12) months.

Some equine have come to Texas under the exception for veterinary treatment and gone to a market where they are tested for EIA and sold. There have been discussions between the market owner, the market veterinarian and agency personnel to clarify that equine coming to a market to an EIA on-site laboratory did not constitute the type of activity covered by the exception, provided above. In response the Commission received a request to change commission rules to "allow equine to be delivered directly from a farm of origin to a USDA specifically approved livestock market by owner or consignee when accompanied by a permit number issued by the Texas Animal Health Commission." In response to the request the Commission authorized staff to bring forth this proposal. The proposal does makes two changes to allow untested equine to enter Texas to be tested and sold provided they have a permit from the Commission and they obtain a CVI prior to sale.

The first change is in §51.3, entitled "Exceptions". The proposal provides an exception for a CVI when entering for sale if they obtain a CVI from a hospital or clinic prior to sale.

The second change is to §51.13, entitled "Equine" The proposal allows equine to enter Texas without a current EIA test provided they were issued a permit from the Commission and consigned to a market with an approved EIA laboratory or to a clinic to be tested.

This rule proposal allows more flexibility for selling horses from other states, with minimal disease risk. This will be more consistent with adjacent state requirements and more user friendly

for seller of horses, CVI can be issued upon arrival by same vet who draws blood for EIA. Prior permit requirement would still allow some traceability and advance notice of animal movements. The CVI would also be more current, and have more validity than one presented that is up to 45 days old.

FISCAL NOTE

Mr. Mike Jensen, Deputy Director for Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rules. There is no negative effect on small or micro-businesses. For market's and EIA testing laboratories there will be some benefit by the fact that the markets and Labs will be able to test and sell out of state horses which arrive untested and that will be a benefit to them. For individuals bringing in these horses the effect is that it will be easier for them to bring their horses into Texas to sell.

PUBLIC BENEFIT NOTE

Mr. Jensen also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that we will have folks checking horses into markets for testing be more forthright in disclosing their premise being out of state. Also in having the horses tested and viewed by a veterinarian at the market this will provide good control of their disease status and allow us handle positives as appropriate.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Government Code, §2001.022, this agency has determined that the adopted rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. These adopted rules are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC, Section 59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Delores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comment@tahc.state.tx.us."

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by §161.041 (b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on

the affected animals or on the affected place. That is found in §161.061.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Section 161.061 provides that if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

No other statutes, articles, or codes are affected by the amendments.

§51.3. Exceptions.

(a) Exceptions for a certificate of veterinary inspection and entry permit.

(1) Cattle 18 months of age and over delivered directly from the farm of origin to slaughter or a USDA specifically approved livestock market by the owner or consigned there and accompanied by a waybill;

(2) Cattle 18 months of age and over entering from other than a farm-of-origin may be moved to slaughter, to a designated pen, or to a quarantined feedlot when accompanied by a VS 1-27 Form on which each animal is individually identified. Brucellosis test data shall be written on the VS 1-27 Form which includes the test date and results;

(3) Steers, spayed heifers, cattle under 18 months of age, delivered to slaughter and accompanied by a waybill or to a livestock market by the owner or consigned there and accompanied by a waybill;

(4) steers, spayed heifers and cattle under 18 months of age delivered to a feedlot for feeding for slaughter by the owner or consigned there and accompanied by a waybill;

(5) Swine and poultry delivered to slaughter by the owner or consigned there and accompanied by a waybill;

(6) Baby poultry which have not been fed or watered if from a national poultry improvement plan (NPIP) or equivalent hatchery, and accompanied by NPIP Form 9-3 or Animal and Plant Health Inspection Service (APHIS) Form 17-6, or have an approved "Commuter Poultry Flock Agreement" on file with the state of origin and the Texas Animal Health Commission; and

(7) Steers, spayed heifers, and cattle under 18 months of age originating in New Mexico which are accompanied by a New Mexico official certificate of livestock inspection.

(b) Exceptions for a certificate of veterinary inspection. Equine may enter Texas when consigned directly to a veterinary hospital or clinic for treatment or for usual veterinary procedures when accompanied by a permit number issued by the Texas Animal Health Commission. Following release by the veterinarian, equidae must be returned immediately to the state of origin by the most direct route. Equine entering Texas for sale at a livestock market, may first be consigned directly to a veterinary hospital or clinic for issuance of the certificate of veterinary inspection, when accompanied by a prior entry permit issued by the Texas Animal Health Commission.

(c) Exceptions for an entry permit.

(1) Swine consigned from out-of-state directly to slaughter or from an out-of-state premise of origin to a Texas livestock market specifically approved under the Code of Federal Regulations, Part 76;

(2) Swine that originate from an approved Swine Commuter Herd or that originate from a Pseudorabies Stage IV or V state or area and Brucellosis free state or area and are not vaccinated for pseudorabies;

(3) Poultry that originate from an approved Poultry Commuter Flock;

(4) Cattle that originate from an approved Cattle Commuter Herd;

(5) Equine accompanied by a valid equine interstate passport or equine ID card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months.

(6) Sheep and goats consigned from out-of-state.

(7) Entry permits are not required for swine consigned from out-of-state directly to slaughter or from an out-of-state premise of origin to a Texas livestock market specifically approved under Title 9 of the Code of Federal Regulations, Part 76.

(8) Entry permits are not required for swine that originate from an approved Swine Commuter Herd.

(9) Exotic fowl from out of state, except ratites.

§51.13. Equine.

(a) Equine infectious anemia (EIA) requirements. All horses, mules, asses, ponies, zebras and all other equidae shall have a certificate of veterinary inspection and proof of a negative EIA test within the previous 12 months prior to entering Texas. The negative test results together with the name of the laboratory conducting the test must be shown on the certificate of veterinary inspection. Alternatively, a completed VS Form 10-11 (Equine Infectious Anemia Laboratory Test) may be attached to the certificate of veterinary inspection. Only test results from USDA-approved laboratories are acceptable. Exceptions to these test requirements are:

(1) equidae consigned directly to an approved slaughtering establishment accompanied by a prior permit issued by the Texas Animal Health Commission;

(2) equidae that have been "S" branded and consigned directly to an approved slaughter establishment accompanied by a VS 1-27 permit;

(3) equidae may enter Texas when consigned directly to a veterinary hospital or clinic for treatment or for usual veterinary procedures when accompanied by a permit number issued by the Texas Animal Health Commission. Following release by the veterinarian,

equidae must be returned immediately to the state of origin by the most direct route;

(4) equidae may enter Texas for shows, fairs, exhibitions or assembly purposes when accompanied by a valid equine interstate passport or equine identification card and a completed VS form 10-11 showing negative results to an official EIA test within the previous six months.

(5) equidae entering for consignment to a livestock market, may first move directly to an EIA approved lab/vet clinic for testing. The animal must be accompanied by a prior entry permit issued by the Texas Animal Health Commission.

(b) Fever tick requirements: Equidae originating in a fever tick infected area must be accompanied by a certificate issued by an authorized state or federal inspector showing them free of fever tick infestation or exposure thereto and dipped in a recognized dipping solution. Dipping must be under the supervision of a state or federal inspector immediately prior to shipment, and the equidae must be transported in clean and disinfected trucks, railroad cars, or other vehicles.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 9, 2005.

TRD-200503980

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: October 23, 2005

For further information, please call: (512) 719-0700



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.78

The Railroad Commission of Texas proposes amendments to §3.78, relating to Fees and Financial Security Requirements, to implement the provisions of House Bill 380, 79th Legislature, Regular Session (2005), which amends Texas Natural Resources Code §§91.104, 91.1041, 91.1042, 91.105, 91.107, 91.108, 91.1091, and 91.111, to authorize the Commission to accept well-specific plugging insurance policies from operators to satisfy financial security requirements for wells subject to the jurisdiction of the Commission as provided by Texas Natural Resources Code, §91.103.

A well-specific plugging insurance policy allows an insurer to use underwriting practices to evaluate a premium cost that, when combined with return on investment, would provide sufficient funding to properly plug a specific well. Other forms of financial security are based on the operator's financial resources and the operator's history of complying with its regulatory obligations.

The proposed amendments conform with the statutory changes and enable an operator to satisfy the financial security requirements for a well if the well bore is included in a well-specific plugging insurance policy, as defined in proposed new subsection (a)(11), provided that the policy: (1) is approved by the Texas Department of Insurance and is issued by an insurer authorized under state law to issue a well-specific plugging insurance policy in Texas; (2) names the Commission as owner and contingent beneficiary; (3) names a primary beneficiary who has agreed to plug the well; (4) is fully prepaid and cannot be canceled or surrendered; (5) continues in effect until the specified well bore has been plugged in accord with Commission rules in effect at the time of plugging; (6) provides that benefits will be paid only when the specified well bore has been plugged; and (7) provides benefits equal to the greatest of \$2 per foot depth, the amount determined under Commission rules for a bay or offshore well, or the payment otherwise due under the policy for plugging the well bore.

Under §91.1041, the amount of the individual bond, letter of credit, or cash deposit required to be filed by an operator is based on \$2 per foot of depth of all of that operator's well bores. Under §91.1042, the amount of the blanket bond, letter of credit, or cash deposit an operator is required to file is based on the operator's total well count. This amount starts at a minimum of \$25,000 for an operator with 10 or fewer wells, and increases to higher financial security amounts based on increasing total well count tiers. The proposed amendments to §3.78 conform with changes to §91.1041 and §91.1042, so that any well bore covered by a well-specific plugging insurance policy is not included in the determination of the total depth of wells or the total number of wells when calculating the amount of the operator's required financial security.

The proposed amendments would delete §3.78(d)(2) of the current rule that refers to unbonded operators that file a nonrefundable annual fee as financial security. This subsection is proposed to be deleted because the enabling statutory provisions allowing for the options to file a nonrefundable annual fee as financial security expired September 1, 2004.

The Commission proposes amendments in subsection (e) to add references to the well-specific insurance policies, and in subsection (f) to require that any operator with no financial security on file with the Commission first satisfy the financial security requirements for operating a well or wells prior to the issuance of a permit to drill, recomplete, or reenter a well. Under the current rule, an operator without financial security can obtain a permit to drill, recomplete, or reenter a well, and can engage in operations including producing the well for up to one year without filing any financial security. If an operator without financial security abandons the well before renewal of its organization report, the Commission will have no financial security covering the well to call on. The proposed amendments will close this regulatory loophole by establishing a deadline by which any operator without financial security must file the financial security for operating a well or wells prior to the issuance of a permit.

The proposed amendments to §3.78 also harmonize the statutory amendments authorizing the Commission to accept well-specific plugging insurance policies with the existing financial security requirements for operators of bay and offshore wells established under §3.78(g). Under Texas Natural Resources Code, §91.1041 and §91.1042, and §3.78(g), financial security amounts for operators of bay and offshore wells are calculated

on an organizational basis rather than a per-well basis. An entry-level financial security requirement applies to all bay and offshore well operators. An additional amount may be applicable for each non-producing bay or offshore well. In recognition of the financial security requirement for all operators of bay and offshore wells, the proposed amendments specify that a well-specific insurance policy be set at the greater of \$2 per foot of well depth or the amount determined under §3.78(g) for a non-producing bay or offshore well.

The Commission also proposes amendments to §3.78(h) to clarify that well-specific plugging insurance policies are limited to plugging liability for the specified well and cannot be called on by the Commission to control, abate, or clean up pollution associated with oil and gas operations, consistent with the statutory changes to Texas Natural Resources Code, §91.105.

Because well-specific plugging insurance policies cannot be cancelled or surrendered, the proposed new wording in subsection (j)(4) recognizes that the requirements for bonds, letters of credit, or cash deposit for transferred wells under §91.107 do not apply to any well bore covered by a well-specific plugging insurance policy.

Leslie Savage, Planner, Oil and Gas Division, has determined that for each year of the first five years the proposed amendments would be in effect, there will be negligible fiscal implications for the state. During the first year of implementation of the proposed amendments (Fiscal Year 2006), the Commission will expend money to make relatively minor revisions in forms and to revise computer programs to allow acceptance of well-specific plugging insurance policies. These changes include reprogramming to calculate the operator's total well count or the total depth of all wells to exclude those wells covered by a well-specific plugging insurance policy from the determination of the amount of financial security required. In addition, the reprogramming must allow the Commission to calculate the total amount of financial security if one or more of an operator's bay or offshore wells are covered by well-specific plugging insurance policies. Ms. Savage estimates that this programming would require approximately 1044 hours, for an approximate cost of \$83,400. This amount could all be incurred in the first year, or could extend into the second year, depending on when the programming begins and is completed.

In addition, programming will be required to allow the Commission to suspend the processing of a drilling permit application for an operator that operates no wells and thus has no financial security on file on which the Commission could call should the operator fail to properly plug the well. Ms. Savage estimates that this programming would require approximately 52 hours, for an additional cost of approximately \$4,100. Again, this expense could all be incurred in the first year, or could extend into the second year, depending on when the programming begins and is completed.

There will be no fiscal effect on local governments.

Texas Government Code, §2006.002, requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses or micro-businesses, a state agency must prepare a statement of the effect of the rule on small businesses and micro-businesses. This statement must include an analysis

of the cost of compliance with the rule for small businesses and micro-businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each \$100 of sales.

Ms. Savage has estimated that the only cost of compliance with the proposed amendments to §3.78 for all operators, whether they be individuals, small businesses, micro-businesses, or large businesses, would be to operators that have not satisfied financial security requirements for the operation of a well or wells and that apply for a permit to drill, reenter, or recomplete a well.

Currently, the Texas Natural Resources Code and the Commission's rules provide for several financial security options to ensure proper plugging of wells under the Commission's jurisdiction. The proposed amendments authorizing the Commission to accept well-specific plugging insurance policies simply offer one more option to operators for complying with the financial security requirements. The proposed amendments do not mandate an operator's selection of any specific option for satisfying the financial security requirements. The operator of a well under the Commission's jurisdiction may choose between bonds, letters of credit or cash deposits, or well-specific plugging insurance policies under the amended rule. In general, the Commission assumes that any operator would select the least costly option or combination of options to comply with the financial security requirements unless the operator perceives some additional benefit from using a particular option.

Because entities required to file an organization report and affiliates of such entities performing operations within the jurisdiction of the Commission are not required to make filings with the Commission reporting number of employees, labor costs, amount of sales, or gross receipts, the Commission cannot determine whether a particular entity required to comply with the amendments to §3.78 may be a small business or a micro-business. However, the Commission has determined that it is likely that some operators would meet the definitions of these terms set forth in Texas Government Code, §2006.001. For the purpose of making the comparison required by Texas Government Code, §2006.002(c), the Commission assumes further that, during a given year, at least one entity desiring to file a well-specific plugging insurance policy with the Commission in accordance with these amendments would be an individual, small business, or micro-business. However, as previously observed, the option of obtaining a well-specific plugging insurance policy to satisfy financial security requirements for the operation of a well or wells is not mandatory and therefore imposes no mandatory additional costs. In addition, an operator of shallow wells, regardless of whether the operator would be an individual, small business, or micro-business, may find the well-specific plugging insurance policy option to be less expensive or to provide superior benefits than the other options. Any operator choosing to comply with the financial security requirements by obtaining a well-specific plugging insurance policy is simply shifting the costs of plugging the well in compliance with Commission regulations from a future payment at the time the well is plugged to a current payment in the form of a premium for a fully prepaid policy that guarantees that the well will be properly plugged in the future before any benefits are paid under the policy.

In addition, Ms. Savage has estimated that the cost of compliance with the proposed amendments to §3.78 requiring operators with no financial security to satisfy the financial security requirements for operating a well or wells prior to the issuance of a

permit to drill, reenter, or recomplete a well will have a negligible impact on any such operator. For the purpose of this analysis, the Commission presumes that by filing an application for a permit to drill, reenter, or recomplete a well, the applicant intends to operate a well subject to the jurisdiction of the Commission.

Under existing Commission rules, operators that are not required to file financial security for their Commission-regulated operations may apply for a permit to drill, reenter, or recomplete a well without first satisfying the financial security requirements for operating a well or wells. Any such operator would not be required to meet the financial security requirements for operating a well or wells until the operator either: (1) renewed its organization report with the Commission; or (2) sought to acquire other existing wells. Under the current rule, an operator could operate a well or wells for a maximum time period of 12 months without any financial assurance on file with the Commission, if the operator obtains the permit on the same date it obtains or renews its organization report.

The proposed amendments would suspend the processing of an application for a permit to drill, reenter, or recomplete a well for an operator that operates no wells and has no financial security on file with the Commission until the required financial security is in place. Currently, any well drilled, reentered, or recompleted does not trigger the filing of the required financial security with the Commission until the operator is either required to renew its organization report or seeks to acquire existing wells. Additionally, deferring the financial security filing requirement for operators with no financial security on file until a well is spudded or reentered would require extensive computer reprogramming, personnel resources, and associated costs to ensure compliance. The proposed amendments would require any operator that intends to operate wells, but has not posted financial security to comply with the financial security requirements for a well or wells consistent with the intended and actual operation of wells. Additionally, regardless of the deadline for filing required financial security, all operators that obtain a permit to drill, reenter, or recomplete a well either become responsible for plugging the well as soon as the well is spudded or assume responsibility for plugging an existing well as soon as the well is reentered. The Commission recognizes that the proposed amendments requiring an operator to satisfy the financial security requirements for operating a well or wells before the issuance of a permit could impact new operators or other operators without wells who wish to drill, reenter, or recomplete a well or wells; however, the Commission has determined that the costs of complying with the new deadline would be negligible.

For the purpose of making the comparison required by Texas Government Code, §2006.002(c), the Commission assumes that, during a given year, at least one entity desiring to apply for a permit to drill, reenter, or recomplete a well that has no wells or other operations that require it to file financial security with the Commission would be an individual, small business, or micro-business.

Because operators are not required to make filings with the Commission reporting number of employees, labor costs, amount of sales, or gross receipts, the Commission cannot definitively determine whether a particular operator may be a small business or a micro-business. However, for the purpose of performing the comparison mandated by the Texas Government Code, §2006.002(c)(2), the Commission has analyzed the estimated maximum impact of the proposed amendments on hypothetical operators.

Operator A has an organization report on file with the Commission, but operates no wells and conducts no other operations that require it to file financial security. Operator A applies for a permit to drill a well and is required comply with the financial security requirements of the proposed amendments. This operator has the option of securing the required financial security through: (1) a well-specific plugging insurance policy; (2) an individual bond, letter of credit, or cash deposit; or (3) a blanket bond, letter of credit, or cash deposit. The amount of the required financial security is a function of: the location of the well or wells (land, bay, or offshore); the well depth, for well-specific plugging insurance policies and individual performance bonds; and the number of wells operated, in the case of blanket performance bonds. The Commission assumes that Operator A will select the least expensive financial security option.

Operator A drills a well within the year between the date of Commission approval of the operator's organization report and the date Operator A must renew its organization report. The well is a dry hole and Operator A plugs the well. Operator A is no longer required to maintain financial security to comply with the proposed amendments because it now operates no wells and no longer intends to operate any wells. Under current Commission regulations, Operator A would not be required to file financial security for the well but still would be liable for the cost of plugging it. Therefore, the only cost of compliance with the proposed amendments for Operator A would be any loss of earned interest, or fees premiums incurred to satisfy the financial security requirement for operating a well as a condition of the issuance of the permit.

Operator B has an organization report on file with the Commission and also operates no wells. Operator B applies for a drilling permit to drill a well and is required to comply with the financial security requirements of the proposed amendments. Operator B drills a successful well and commences production or drills a dry hole but does not plug it. Under the proposed amendments, Operator B must satisfy the financial security requirements incident to the operation of the well until the well is either properly plugged or transferred to another operator. Under current Commission regulations, Operator B would not be required to file financial security with the Commission for the well until it renews its organization report or acquires other existing wells. Therefore, Operator B's cost of compliance with the proposed amendments would be any loss of earned interest, or fees or premiums incurred to satisfy the financial security requirement for operating a well as a condition of the issuance of the permit instead of at the renewal of its organization report or upon the acquisition of additional existing wells.

In both scenarios the cost of compliance would be greater for bay or offshore wells, due to the additional financial security required for operators of bay and offshore wells.

For the purpose of estimating the cost of compliance with the deadline for filing financial security for operators without financial security on file with the Commission that apply for permits to drill, reenter, or recomplete wells, the Commission used a worst-case scenario, which would be the hypothetical case of an operator with no financial security requirement that obtained a permit for an offshore well on the same date that it filed either an initial or renewal organization report. Under this scenario, the operator would not acquire any additional wells that would trigger a requirement to comply with the financial security requirements before the renewal date for its organization report. The financial security requirements for an offshore well with a depth

of 11,180 feet would be \$100,000 under the least expensive financial security option. The cost of compliance would be the fee paid to the financial institution, the premium paid to a surety company or insurer, or the interest that would have accrued on these funds if the operator submits to the Commission a cash deposit. The Commission presumes that the lowest cost would be the loss of interest associated with a cash deposit, which under the worst-case scenario outlined above would be the interest on \$100,000 over a 12-month period. At the current interest rate of 6.25 per cent (interest rate for 2005, Texas Comptroller of Public Accounts) this cost is \$625. Therefore, the cost of complying with the proposed amendments would be \$625 per employee if the individual, small business, or micro-business operator has one employee; \$31.25 per employee if the entity has 20 employees; and \$6.31 per employee if the entity has 99 employees. Comparable cost per employee for the largest businesses affected by the proposed amendment would be \$1.25 for an employer of 500 persons and \$0.63 for an employer of 1,000 persons.

Mark J. Helmueller, Hearings Examiner, Hearings Section, Office of General Counsel, has determined that for each year of the first five years that the amendments will be in effect the primary public benefit will be the inclusion of an additional option by which operators can comply with financial security requirements associated with the operation of wells.

Additionally, for those wells covered under a well-specific plugging insurance policy, the financial security on file will more closely parallel the estimated cost to plug the wells in compliance with Commission requirements. The proposed amendments will also ensure that operators who intend to operate wells subject to the Commission's jurisdiction are in compliance with the financial security requirements established by the Texas Natural Resources Code and Commission rules.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. Comments should refer to Docket No. 20-0244126. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mark J. Helmueller at (512) 463-6802. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments to §3.78 pursuant to Texas Natural Resources Code, §§91.103, 91.104, 91.1041, 91.1042, 91.105, 91.107, 91.108, 91.1091, and 91.111, which provide the Commission with the authority to accept well-specific plugging insurance policies from operators to satisfy requirements to provide financial security for wells subject to the jurisdiction of the Commission.

Texas Natural Resources Code, §§91.103, 91.104, 91.1041, 91.1042, 91.105, 91.107, 91.108, 91.1091, and 91.111, are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §§91.103, 91.104, 91.1041, 91.1042, 91.105, 91.107, 91.108, 91.1091, and 91.111.

Cross-reference to statutes: Texas Natural Resources Code, §§91.103, 91.104, 91.1041, 91.1042, 91.105, 91.107, 91.108, 91.1091, and 91.111.

Issued in Austin, Texas on September 7, 2005.

§3.78. *Fees and Financial Security Requirements.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (10) (No change.)

(11) Well-specific plugging insurance policy--An insurance policy that:

(A) is approved by the Texas Department of Insurance;

(B) is issued by an insurer authorized under state law to issue a well-specific plugging insurance policy in Texas;

(C) names the Commission as the owner and contingent beneficiary of the policy;

(D) names a primary beneficiary who agrees to plug the specified well bore;

(E) is fully prepaid and cannot be canceled or surrendered;

(F) provides that the policy continues in effect until the well bore has been plugged as required by the Commission;

(G) provides that benefits will be paid when, but not before, the specified well bore has been plugged; and

(H) provides that benefits that will equal or exceed:

(i) \$2 per foot for each foot of well depth for land wells;

(ii) \$60,000 for bay wells; or

(iii) \$100,000 for offshore wells.

(12) [(H)] Director--The director of the Commission's Oil and Gas Division or the director's delegate.

(b) - (c) (No change.)

(d) Financial security.

[(H)] Except for those operators exempted under subsection (g)(7) of this section, any person, including any firm, partnership, joint stock association, corporation, or other organization, required by Texas Natural Resources Code, §91.142, to file an organization report with the Commission must also file financial security in one of the following forms:

(1) [(A)] an individual performance bond;

(2) [(B)] a blanket performance bond; or

(3) [(C)] a letter of credit or cash deposit in the same amount as required for an individual performance bond or blanket performance bond.

[(2)] An unbonded operator that has a current and active organization report and filed a nonrefundable annual fee as its financial security prior to September 1, 2004, may continue to perform operations subject to the Commission's jurisdiction with such financial security until the first date after September 1, 2004, for annual renewal of the operator's organization report, at which time the operator shall file financial security as required by subsection (g) of this section.]

(e) Forms for financial security and insurance policies. Operators shall submit well-specific plugging insurance policies, bonds and letters of credit on forms prescribed by the Commission.

(f) Filing deadlines for financial security and insurance policies. Operators shall submit required financial security or well-specific plugging insurance policies at the time of filing an initial organization report, as a condition of the issuance of a permit to drill, recompleat or reenter, [or] upon yearly renewal, or as otherwise required under this section.

(g) Amount of financial security. An operator required to file financial security under subsection (d) of this section shall file financial security described in this subsection.

(1) Types and amounts of financial security required.

(A) A person operating one or more wells may file an individual performance bond, letter of credit, or cash deposit in an amount equal to the sum of \$2.00 for each foot of total well depth for each well operated, excluding any well bore included in a well-specific plugging insurance policy.

(B) A person operating one or more wells may file a blanket bond, letter of credit, or cash deposit to cover all wells for which a bond, letter of credit, or cash deposit is required in an amount equal to the sum of the base amount determined by the total number of wells operated excluding any well bores and/or permits issued to drill, recompleat, or reenter wells included in a well-specific plugging insurance policy. A person performing multiple operations shall be required to file only one blanket bond, letter of credit, or cash deposit unless the person is operating a commercial facility, in which case the person also shall comply with the financial security requirements of subsection (1) of this section. The financial security amount shall be at least the base amount determined by the total number of wells operated or \$25,000, whichever is greater. After excluding any well bores and/or permits issued to drill, recompleat or reenter wells included in a well-specific plugging insurance policy, the [The] base amount is determined as follows:

(i) - (iii) (No change.)

(2) Additional financial security for bay wells.

(A) (No change.)

(B) For each bay well that is not currently producing oil or gas and has not produced oil or gas within the past 12 months, including injection and disposal wells, the operator shall file additional financial security of \$60,000, unless the well bore is included in a well-specific plugging insurance policy that provides benefits of at least \$60,000. An operator shall not be required to file additional financial security in addition to the \$60,000 amount set under subparagraph (A) of this paragraph if the operator operates only a single inactive bay well.

(C) (No change.)

(3) Additional financial security for offshore wells.

(A) (No change.)

(B) For each offshore well that is not currently producing oil or gas and has not produced oil or gas within the past 12 months, including injection and disposal wells, the operator shall file an additional amount of financial security of \$100,000, unless the well bore is included in a well-specific plugging insurance policy that provides benefits of at least \$100,000. An operator shall not be required to file additional financial security in addition to the \$100,000 amount set under subparagraph (A) of this paragraph if the operator operates only a single inactive offshore well.

(C) (No change.)

(4) - (9) (No change.)

(h) Financial security conditions. Any bond, letter of credit, or cash deposit [~~financial security~~] required under this section is subject to the conditions that the operator will plug and abandon all wells and control, abate, and clean up pollution associated with the oil and gas operations and activities covered under the required financial security in accordance with applicable state law and permits, rules, and orders of the Commission. This section does not apply to a well-specific plugging insurance policy.

(i) (No change.)

(j) Well or lease transfer.

(1) - (3) (No change.)

(4) The Commission may approve a transfer of operatorship submitted for any well bore included in a well-specific plugging insurance policy if the transfer meets all other Commission requirements.

(k) - (m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 7, 2005.

TRD-200503939

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: October 23, 2005

For further information, please call: (512) 475-1295

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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 133. LICENSING

SUBCHAPTER B. PROFESSIONAL ENGINEER LICENSES

22 TAC §133.11

The Texas Board of Professional Engineers proposes an amendment to §133.11, relating to the Types of Licenses. The proposed amendment includes a minor citation change.

The proposed amendment modifies a citation in the rule to §133.69, Waiver of Examinations.

Lance Kinney, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated

as a result of enforcing the proposed amendment will be clarification of the license and registration process.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Director of Licensing, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§133.11. Types of Licenses.

The board shall receive, evaluate and process all applications for licensure as a professional engineer received from individuals who assert through the application process that they meet the minimum requirements of §1001.302 of the Act. The board shall deny a license to any applicant found not to have met all requirements of the Act and board rules.

(1) Standard License. Unless requested by the applicant or license holder, all licenses issued by the board shall be considered standard licenses. Standard licenses are fully renewable annually until such time as the board takes specific action to prevent renewal or provision of the Texas Engineering Practice Act prevents renewal.

(2) Reciprocal or Comity License: (U.S. states or territories). Pursuant to §1001.311 of the Act, the board has reviewed the licensing requirements of the jurisdictions listed in this paragraph and has found them to be substantially equivalent to the requirements in Texas. The board shall waive the application requirements of §133.21 for an applicant who is licensed in good standing with at least one of the jurisdictions listed in this paragraph and submits the documentation as required in §133.27(a) of this chapter. A reciprocal or comity license issued under this paragraph has full status of and shall be issued as a standard license. The board does not recognize any U.S. state or territory for reciprocity or comity at this time.

(3) Reciprocal or Comity License: (Canada and the United Mexican States through NAFTA). Pursuant to §1001.311 of the Act and the NAFTA Mutual Recognition Agreement, the board has reviewed the licensing requirements of Canada and the United Mexican States and has found them to be substantially equivalent to the requirements in Texas. A reciprocal or comity license issued under this paragraph has full status of and shall be issued as a temporary license. The board may waive the application requirements of §133.21 for applicants who:

(A) are currently licensed in good standing with at least one of the jurisdictions listed in this paragraph;

(B) meet the experience requirements of §133.69(c) [(a)(3)(A) or §133.69(a)(3)(B)] of this chapter; and

(C) submit the documentation as required in §133.27(b) of this chapter.

(4) Temporary License. A temporary license holder shall be subject to all other rules and legal requirements to which a holder of a standard license is subject. A temporary license may only be renewed twice. The executive director shall be authorized to convert a standard license to a temporary license.

(5) Provisional. The Board does not issue provisional licenses at this time.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200503996

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 23, 2005

For further information, please call: (512) 440-7223

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**PART 8. TEXAS APPRAISER
LICENSING AND CERTIFICATION
BOARD**

**CHAPTER 157. RULES RELATING TO
PRACTICE AND PROCEDURE**

**SUBCHAPTER B. CONTESTED CASE
HEARINGS**

22 TAC §157.11

The Texas Appraiser Licensing and Certification Board proposes amendments to §157.11, Contested Cases; Entry of Appearance; Continuance to change the current process of referring contested cases to the State Office of Administrative Hearings to the use of the agency's in-house administrative law judge as enacted by SB382.

Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Thorburn also has determined that for each year of the first five years the amendments are in effect, the public benefit will expedite the complaint process by utilizing the agency's in house administrative law judge. There will be no effect on small businesses. There will be no cost to individuals who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses.

No other code, article, or statute is affected by this proposal.

§157.11. Contested Cases; Entry of Appearance; Continuance.

(a) When a contested case has been instituted, the respondent or the representative of the respondent shall enter an appearance not later than 20 days after the date of receipt of notice as provided in §12A of the Act.

(b) For the purposes of this section, a contested case shall mean any action that is referred by the board to the agency's administrative law judge [State Office of Administrative Hearings].

(c) For purposes of this section, an entry of appearance shall mean the filing of a written answer or other responsive pleading with the agency's administrative law judge [State Office of Administrative Hearings].

(d) The filing of an untimely appearance by a party, or entering an appearance at the contested case hearing entitles the board to a continuance of the hearing in the contested case at the board's discretion for such a reasonable period of time as determined by the administrative law judge, but not for a period of less than 20 days. For purposes of this section, an untimely appearance is an appearance not entered within 20 days of the date the respondent has received notice.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200504017

Wayne Thorburn

Commissioner

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 23, 2005

For further information, please call: (512) 465-3959



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 169. ZOONOSIS CONTROL

SUBCHAPTER E. DOG AND CAT STERILIZATION

25 TAC §169.102

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §169.102, concerning the Department of State Health Services Animal Friendly Grants.

BACKGROUND AND PURPOSE

The amendment is necessary to comply with Government Code, Chapter 828, Subchapter E, "Dog and Cat Sterilization," which requires the department to make grants to eligible organizations for the purpose of providing low-cost dog and cat sterilization to the general public.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 169.102 has been reviewed and the department has determined that reasons for adopting the section continue to exist, because a rule on this subject is needed.

SECTION-BY-SECTION SUMMARY

Amendment to §169.102 is necessary to comply with the mandated four-year rule review, update the legacy agency name, change the program name to the "Zoonosis Control Group" instead of "Zoonosis Control Division", and to replace the words "surgery" with "sterilization".

FISCAL NOTE

Rolando Garza, Acting Section Director, Community Preparedness Section, has determined that for each year of the first five-year period that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Garza has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Garza has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section will be the distribution of funding to provide low-cost surgical sterilization of dogs and cats, thereby reducing the public health threat due to stray animals.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Debbie Speicher, Department of State Health Services, Community Preparedness Section, Zoonosis Control Group, 1100 West 49th Street, Austin, Texas 78756, or by email to Debbie.Speicher@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rule has been

reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendment is authorized by Health and Safety Code, §828.014, which provides the department with the authority to make grants to eligible organizations for the purpose of providing low-cost dog and cat sterilization to the general public; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department, and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendment affects Health and Safety Code, Chapters 828 and 1001; and Government Code, Chapter 531.

§169.102. Department of State Health Services [Texas Department of Health] Animal Friendly Grants.

(a) Purpose.

(1) (No change.)

(2) The grants shall be known as a part of the "Department of State Health Services [Texas Department of Health] Animal Friendly Grants."

(3) (No change.)

(b) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) (No change.)

~~[(2) Commissioner--Commissioner of Health or his or her designee.]~~

(2) ~~[(3)]~~ Department--Department of State Health Services [Texas Department of Health].

(3) ~~[(4)]~~ Local non-profit veterinary medical association--An organization set up by and comprised of several volunteer veterinarians in their immediate region for the purpose of presenting continuing education, planning group activities, or discussing issues common to their professional field.

(4) ~~[(5)]~~ Nonprofit organization--A private, nonprofit, tax-exempt corporation, association or organization under Internal Revenue Code of 1986, §501(c)(3) (26 United States Code §501(c)(3)).

(5) ~~[(6)]~~ Owner--A person which feeds, shelters, harbors, has possession or control, or has the responsibility to control an animal.

(c) - (f) (No change.)

(g) Procedures for Grant Announcements.

(1) (No change.)

(2) The department shall maintain a list of persons to be notified of requests for proposals. Any person wanting to be placed on the list should contact: Animal Friendly Grants, Zoonosis Control Group ~~[Division]~~, 1100 West 49th Street, Austin, Texas 78756.

(3) (No change.)

(h) - (i) (No change.)

(j) Selection Criteria.

(1) No grant shall be approved unless, in the opinion of the department:

(A) - (C) (No change.)

(D) the applicant specifies how the general public will be made aware of the availability of low-cost sterilization ~~[surgery]~~.

(E) (No change.)

(2) A grant application will be given funding preference, in a manner determined by the department and announced in the request for proposal, to the extent that it:

(A) - (B) (No change.)

(C) demonstrates a low cost for sterilization ~~[surgery]~~ on a per animal basis, thereby maximizing the number of animals which can be sterilized.

(D) - (E) (No change.)

(k) - (l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 9, 2005.

TRD-200503975

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: October 23, 2005

For further information, please call: (512) 458-7236



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

The Texas Department of Insurance proposes amendments to §§5.4101, 5.4201, 5.4401 and 5.4501, concerning the adoption by reference of the dwelling, mobile home, and commercial policy forms, endorsements for use with policy forms, and the rules manual used to provide windstorm and hail insurance coverage through the Texas Windstorm Insurance Association (TWIA). The purpose of TWIA is to provide windstorm and hail coverage to residents and businesses in the designated catastrophe areas that are unable to obtain such coverage in the voluntary market. TWIA filed a petition with the department on December 1, 2004 (Ref. No. P-1204-22) requesting that §§5.4101, 5.4201, 5.4401 and 5.4501 and documents adopted by reference (Form No. TWIA-431, Form No. TWIA-432, Form No. TWIA-320, TWIA Dwelling Policy, TWIA Texas Special Mobile Home Windstorm and Hail Insurance Policy, TWIA Commercial Policy, and TWIA Manual) be amended. These forms and manual may be obtained by contacting the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-0909, (512) 899-4900 or the Personal Lines Division, Mail Code 104-1A,

of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104, and (512) 322-2266.

The proposed amendments reflect five separate and distinct changes in policy forms and endorsements. The first amendment is the proposal of two new endorsements that provide coverage for increased cost in construction due to a requirement or regulation to rebuild or repair a structure in accordance with the windstorm building code or any building ordinance or law. This amendment includes the withdrawal of an existing endorsement as well as changes to the Manual. The second proposed amendment clarifies the exception to the exclusion of rain damage in the dwelling policy. The third proposed amendment clarifies coverage for wind-driven rain damage provided in the extension of coverage endorsement that may be attached to the dwelling policy. The fourth proposed amendment clarifies the exclusion for mold, fungi, or other microorganisms in the dwelling, commercial, and mobile home policies. The fifth proposed amendment provides for the exclusion of damage caused by or resulting from asbestos, including exclusion for the cost for testing and clean-up in the dwelling, commercial and mobile home policies.

Lastly, the department proposes editorial changes to the rules that include current titles and addresses, consistent language between rules and elimination of obsolete references.

The TWIA Dwelling Policy and the TWIA Commercial Policy do not currently provide coverage for the increased cost in construction that may occur due to requirements to rebuild or replace structures in accordance with current building laws or ordinances. TWIA currently offers coverage for increased cost of construction to rebuild to the windstorm building code through the attachment of an optional endorsement: Form No. TWIA-430, Extension of Coverage-Increased Cost of Construction. The proposed amendment withdraws Form No. TWIA-430 and proposes replacing it with two new optional endorsements: Form No. TWIA-431, Extension of Coverage-Increased Cost of Construction (for dwelling policies) and Form No. TWIA-432, Extension of Coverage-Increased Cost of Construction (for commercial policies). The new endorsements would provide coverage for increased cost of construction to rebuild to current building laws or ordinances and provide the current coverage for increased cost of construction to rebuild to the applicable windstorm building code. The proposed additional coverage would apply to the demolition or repair of an undamaged portion of a structure if necessary to meet the requirements of the law or ordinance. In addition to proposing Form No. TWIA-431 and Form No. TWIA-432, the department proposes to amend the Manual to reflect the usage of the new endorsements and corresponding rates.

Rain damage is not covered by the dwelling or commercial policies, unless wind or hail first makes an opening in the walls or roof and the rain enters through the opening. The proposal amends the exception to the rain damage exclusion in the TWIA Dwelling Policy to be more consistent with the rain damage exclusion in the Commercial Policy. The proposed amendment clarifies that for coverage to apply, the direct force of the wind or hail must first make an opening in the walls or roof and the wind-driven rain must "immediately" cause damage during a windstorm to the interior of the building and its contents. Additionally, TWIA currently offers an extension of coverage, Form No. TWIA-320, that may be attached to the TWIA Dwelling Policy to provide coverage for damage caused by wind-driven rain whether or not an opening is made in the dwelling by the direct force of wind or

hail. This proposal amends Form No. TWIA-320 to specify that coverage applies only to "sudden and accidental" losses caused "immediately by wind-driven rain during a windstorm."

The proposed amendments also provide an exclusion to the commercial, dwelling, and mobile home policies for any loss or damage due to asbestos, fungi, mold and other microorganisms.

The department will consider the adoption of these amendments in a public hearing under Docket Number 2624, scheduled for 9:30 a.m. on October 20, 2005, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, has determined that for each year of the first five years the proposed amendments are in effect, there will be no fiscal implications for state government or local government as a result of enforcing or administering the proposed amendments. Ms. Hamilton has also determined that for each year of the first five years the proposed amendments will be in effect, there will be no adverse effect on local employment or the local economy.

Ms. Hamilton has further determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering the proposed amendments will be the availability of two new optional endorsements that provide coverage for increased costs in construction beyond what is currently offered by TWIA as well as the offering of policies that more clearly state the coverage provided by and excluded under TWIA policies. Clarifying the TWIA policy exclusions and exceptions to those exclusions benefits TWIA insureds by enabling TWIA to pay only for losses that were intended to be covered by its policies and eliminating unnecessary costs that could lead to higher rates or possible assessments to its members. Additionally, clarifying what is excluded and covered under its policies will enable TWIA to achieve its purpose.

TWIA will incur costs for printing the new policies and endorsements; however, TWIA has agreed to bear such costs by filing the petition. Under proposed §5.4501, TWIA will not incur the costs in printing and distributing the revised pages of the Manual because the Manual is printed and distributed by CCH Insurance Services (CCH) and ICT Services (ICT). Agents who utilize the Manual subscribe to it directly from one of these sources. ICT charges \$15.00 for new subscriptions and \$15.00 to renew a subscription which includes providing the Manual and all updates to the Manual. CCH charges \$44.00 for new subscriptions and \$21.00 to renew a subscription which includes providing the Manual and all updates to the Manual. CCH and ICT have informed the department that they will print and distribute the updated Manual pages to their subscribers at no additional charge. Since there will be no new costs, other than printing new policies and endorsements and no new costs to agents who write windstorm and hail insurance through TWIA to obtain the Manual updates, there is no anticipated adverse economic effect regarding the regulatory cost of compliance with the proposal. Additionally, Government Code §2006.001 defines "small business" and "micro-business" in pertinent part as a legal entity, including a corporation, partnership, or sole proprietorship that is formed for the purpose of making a profit. Since TWIA was not formed for the purpose of making a profit, it does not meet the definition, and thus a small or micro-business analysis is not statutorily required.

To be considered, written comments on the proposed amendments must be submitted no later than 5:00 p.m. on October

24, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, MC 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

DIVISION 3. POLICY FORMS

28 TAC §5.4101

The amendments are proposed pursuant to Insurance Code Article 21.49 and §36.001. Pursuant to Article 21.49, §8, the Commissioner is authorized to promulgate policy forms and endorsements for use by the TWIA in providing windstorm and hail insurance coverage without regard to other forms filed with, approved by, or promulgated by the Commissioner for use in this state, and further the Commissioner is authorized to approve, modify, or disapprove every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing used by the TWIA. Article 21.49, §5A provides that the Commissioner may, after notice and hearing, issue any orders which the Commissioner considers necessary to carry out the purposes of Article 21.49, including, but not limited to, maximum rates, competitive rates, and policy forms. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by this proposal: Insurance Code Article 21.49.

§5.4101. TWIA [~~Association~~] Dwelling and Commercial Policy Forms.

The Texas Department of Insurance adopts by reference the Texas Windstorm Insurance Association Dwelling Policy and the Texas Windstorm Insurance Association Commercial Policy as amended effective January 1, 2006 [~~March 1, 2003~~]. Specimen copies of these policy forms [~~These documents~~] are [~~published by and~~] available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. Copies [~~They~~] may also be obtained by contacting the Personal Lines [~~Automobile and Homeowners~~] Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, [~~P.O. Box 149104,~~] Austin, Texas 78714-9104.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200504012

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: October 23, 2005

For further information, please call: (512) 463-6327



DIVISION 4. ENDORSEMENTS

28 TAC §5.4201

The amendments are proposed pursuant to Insurance Code Article 21.49 and §36.001. Pursuant to Article 21.49, §8, the Commissioner is authorized to promulgate policy forms and endorsements for use by the TWIA in providing windstorm and hail insurance coverage without regard to other forms filed with, approved by, or promulgated by the Commissioner for use in this state, and further the Commissioner is authorized to approve, modify, or disapprove every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing used by the TWIA. Article 21.49, §5A provides that the Commissioner may, after notice and hearing, issue any orders which the Commissioner considers necessary to carry out the purposes of Article 21.49, including, but not limited to, maximum rates, competitive rates, and policy forms. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by this proposal: Insurance Code Article 21.49

§5.4201. Endorsements for Use with TWIA [~~Association~~] Policy Forms.

The Texas Department [~~Commissioner~~] of Insurance adopts by reference endorsements for use with the Texas Windstorm Insurance Association (TWIA) Policy Forms. Specimen copies of these endorsements [~~endorsement forms~~] are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. They are also available from the Personal Lines [~~Automobile and Homeowners~~] Division, Mail Code 104-1A [~~104-5A~~], Texas Department of Insurance, 333 Guadalupe Street, [~~P.O. Box 149104,~~] Austin, Texas 78714-9104. The endorsement forms are more specifically identified as follows.

(1) Endorsements for use with the TWIA [~~Association~~] Dwelling Policy and the TWIA [~~Association~~] Commercial Policy; [~~and the Association Farm and Ranch Dwelling Policy.~~]

[(A)] Form No. TWIA-1, Blank Schedule Form, effective June 15, 1999.

[(B)] Form No. TWIA-430, Extension of Coverage--~~Increased Cost in Construction~~, effective June 15, 1999.]

(2) Endorsements for use with the TWIA [~~Association~~] Dwelling Policy and the TWIA [~~Association~~] Commercial Policy and [~~the Association Farm and Ranch Dwelling Policy and~~] the Texas Special Mobile Home Windstorm and Hail Insurance Policy.

(A) - (I) (No change.)

(3) Endorsements for use with the TWIA [~~Association~~] Commercial Policy.

(A) - (J) (No change.)

[(K)] Form No. TWIA-432, Extension of Coverage--~~Increased Cost of Construction~~ (Commercial), effective January 1, 2006.

(4) Endorsements for use with the TWIA [~~Association~~] Dwelling Policy.

(A) - (B) (No change.)

(C) Form No. TWIA-320, Extensions of Coverage, effective January 1, 2006 [~~amended, June 15, 1999~~].

(D) - (G) (No change.)

[(H)] Form No. TWIA-431, Extension of Coverage--~~Increased Cost in Construction~~ (Dwelling), effective January 1, 2006.

(5) Endorsements for use with the TWIA [Association] Dwelling Policy [and the Association Farm and Ranch Dwelling Policy].

(A) - (H) (No change.)

(6) Endorsements for use with the Texas Special [Association] Mobile Home [Policy-Texas Special Mobile Home] Windstorm and Hail Insurance Policy.

(A) - (C) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200504010

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: October 23, 2005

For further information, please call: (512) 463-6327

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DIVISION 5. TEXAS SPECIAL MOBILE HOME WINDSTORM AND HAIL INSURANCE POLICY

28 TAC §5.4401

The amendments are proposed pursuant to Insurance Code Article 21.49 and §36.001. Pursuant to Article 21.49, §8, the Commissioner is authorized to promulgate policy forms and endorsements for use by the TWIA in providing windstorm and hail insurance coverage without regard to other forms filed with, approved by, or promulgated by the Commissioner for use in this state, and further the Commissioner is authorized to approve, modify, or disapprove every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing used by the TWIA. Article 21.49, §5A provides that the Commissioner may, after notice and hearing, issue any orders which the Commissioner considers necessary to carry out the purposes of Article 21.49, including, but not limited to, maximum rates, competitive rates, and policy forms. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by this proposal: Insurance Code Article 21.49

§5.4401. Texas Special Mobile Home Windstorm and Hail Insurance Policy--Deductible Coverage.

The Texas Department of Insurance adopts by reference the Texas Special Mobile Home Windstorm [special mobile home windstorm] and Hail Insurance Policy [hail insurance policy]--Deductible Coverage [deductible coverage], as amended effective January 1, 2006 [March 1, 2003]. Specimen copies of this policy are [This document is published by and] available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. Copies [It] may also

be obtained by contacting the Personal Lines [Automobile and Homeowners] Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, [P.O. Box 149104,] Austin, Texas 78714-9104.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200504009

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: October 23, 2005

For further information, please call: (512) 463-6327

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DIVISION 6. MANUAL

28 TAC §5.4501

The amendments are proposed pursuant to Insurance Code Article 21.49 and §36.001. Pursuant to Article 21.49, §8, the Commissioner is authorized to promulgate policy forms and endorsements for use by the TWIA in providing windstorm and hail insurance coverage without regard to other forms filed with, approved by, or promulgated by the Commissioner for use in this state, and further the Commissioner is authorized to approve, modify, or disapprove every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing used by the TWIA. Article 21.49, §5A provides that the Commissioner may, after notice and hearing, issue any orders which the Commissioner considers necessary to carry out the purposes of Article 21.49, including, but not limited to, maximum rates, competitive rates, and policy forms. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by this proposal: Insurance Code Article 21.49

§5.4501. Rules for the Texas Windstorm Insurance Association.

The Texas Department of Insurance adopts by reference a rules manual for the Texas Windstorm Insurance Association as amended effective January 1, 2006 [June 15, 1999: The Texas Department of Insurance adopts by reference amendments effective May 1, 2001, October 15, 2002, May 1, 2003, and July 31, 2003, to the rules manual]. A specimen copy of the rules manual is available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin Texas 78709-9090. Copies [of the rules manual] may also be obtained by contacting the Personal Lines [Automobile and Homeowners] Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, [P.O. Box 149104,] Austin, Texas 78714-9104.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200504008

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §§15.24, 15.31, 15.33

The General Land Office (GLO) proposes amendments to §15.24 relating to Certification Status of City of Port Aransas Dune Protection and Beach Access Plan, §15.31 relating to Certification Status of City of Corpus Christi Dune Protection and Beach Access Plan, and §15.33 relating to Certification Status of Nueces County Dune Protection and Beach Access Plan.

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §§15.1 through 15.10), a local government with jurisdiction over gulf beaches must submit its beach management plan and amendments to the plan to the GLO for certification, including a plan to impose or increase public beach access, parking, or use fees. The GLO is required to review such plans and certify by rule those plans that are consistent with the Open Beaches Act, the Dune Protection Act, and the Beach/Dune Rules.

As provided in 31 TAC §15.8(b) concerning reciprocity of fees, the City of Port Aransas, the City of Corpus Christi, and Nueces County established a unified beach parking permit system in 2002 that allows beach users who purchase a beach parking permit to park on any of the beaches that require a parking permit within the three jurisdictions. The revenues received are distributed between the jurisdictions based on the number of linear feet within each jurisdiction.

The City of Port Aransas, the City of Corpus Christi, and Nueces County, have each requested approval of an increase in the beach user fee imposed in accordance with 31 TAC §15.8 and Texas Natural Resources Code §61.022(c). On March 17, 2005, the City of Port Aransas passed Ordinance No. 2005-03, which amended its dune protection and beach access plan to increase the beach user fee imposed by the City of Port Aransas pursuant to 31 TAC §15.8 from \$6.00 per calendar year to \$12.00 per calendar year. On April 12, 2005, the City of Corpus Christi passed Ordinance No. 026208, which amended its dune protection and beach access plan to revise the beach user fee plan incorporated as Appendix XVII to provide an increase the beach user fee imposed by the City of Corpus Christi pursuant to 31 TAC §15.8 from \$6.00 per calendar year to \$12.00 per calendar year. On March 16, 2005, Nueces County adopted Order No. 20050032 which amended the its dune protection and beach access plan to increase the beach user fee imposed by Nueces County pursuant to 31 TAC §15.8 from \$6.00 per calendar year to \$12.00 per calendar year.

The GLO proposes amendments to the certification status of the beach access plans for the City of Port Aransas, the City of Corpus Christi, and Nueces County currently summarized in §§15.24, 15.31, and 15.33, respectively, only in regards to approval and certification of beach user fee provisions and does not propose any other changes to the certification status of the those plans.

The GLO reviewed information provided by the City of Port Aransas by letter dated April 26, 2005, in support of its request to amend its beach user fee plan; information provided by the City of Corpus Christi by letter dated October 19, 2004, in support of its request to amend its beach user fee plan; and information provided by Nueces County by letter dated June 10, 2005, in support of its request to amend its beach user fee plan as required by 31 TAC §15.8(d), together with beach user fee revenue reports required by 31 TAC §15.8(f). Based on the information provided by the City of Port Aransas, the City of Corpus Christi, and Nueces County, the GLO has determined that the fee increase requested by each of these jurisdictions is reasonable in that it does not exceed the necessary and actual cost of providing reasonable beach-related facilities and services, does not unfairly limit public use of and access to and from public beaches in any manner, and is consistent with §15.8 of the Beach/Dune Rules and the Open Beaches Act.

Mr. Sam Webb, Deputy Commissioner for the GLO's Coastal Resources Program Area, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for the state government as a result of enforcing or administering the amended or new sections. There will be a fiscal impact on local governments as a result of enforcing or administering the amended sections. The City of Port Aransas will experience an increase in net revenue estimated at approximately \$106,000 for each year of the first five years the amended section as proposed is in effect as a result of the increased beach user fees to be collected. The City of Corpus Christi will experience an increase in net revenue estimated at approximately \$172,000 for each year of the first five years the amended section as proposed is in effect as a result of the increased beach user fees to be collected. Nueces County will experience an increase in net revenue estimated at approximately \$31,000 for each year of the first five years the amended section as proposed is in effect as a result of the increased beach user fees to be collected.

The GLO has determined that the proposed rule changes will not have an affect on the costs of compliance for small businesses or large businesses as the proposed changes relate to permits for parking on the beach. Individuals required to comply with each jurisdiction's amended plan to increase the beach user fee to be collected in fee areas for parking on the beach will experience increased costs for parking of up to \$6.00 per year. The plans for each jurisdiction also identify no-fee areas as required by 31 TAC §15.8(h), which serves to mitigate the impact of the beach user fee increase.

Mr. Webb has determined the public will benefit from the increase in the beach user fees imposed in each jurisdiction because the increased fees are necessary for the City of Port Aransas, the City of Corpus Christi, and Nueces County to continue to fund and provide adequate and improved beach-related services to the public including: funding for ensuring safe use of and access to and from the public beach, including vehicular controls, management, and parking regulations; acquisition and maintenance of off-beach parking and access ways; sanitation

and litter control, including providing and servicing trash receptacles; lifeguard and lifesaving services; beach maintenance, including removal of debris and relocation of seaweed; law enforcement; beach nourishment projects; beach/dune system education; beach/dune protection and restoration projects; providing public facilities such as portable restrooms, showers, and picnic areas; and permitting of recreational and refreshment vendors.

The GLO has determined a local employment impact statement on these proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

The proposal to amend §15.24 relating to Certification Status of City of Port Aransas Dune Protection and Beach Access Plan, §15.31 relating to Certification Status of City of Corpus Christi Dune Protection and Beach Access Plan, and §15.33 relating to Certification Status of Nueces County Dune Protection and Beach Access Plan is subject to the Coastal Management Program (CMP) as provided in Texas Natural Resources Code §33.2053(a)(10) and 31 TAC §505.11(a)(1)(J), relating to the Actions and Rules Subject to the CMP, and must be consistent with the applicable CMP goals and policies under §501.26, relating to Policies Construction in the Beach/Dune System. The GLO has reviewed the proposed rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The proposed action is consistent with the GLO Beach/Dune regulations that the Council has determined to be consistent with the CMP. Consequently, the Land Office has determined that the proposed action is consistent with the applicable CMP goals and policies. The proposed amendments will be distributed to Council members in order to provide them an opportunity to provide comment on the consistency of the proposed rulemaking during the comment period.

The GLO has evaluated the proposed amendments to determine whether Texas Government Code chapter 2007, is applicable and a detailed takings impact assessment required. The GLO has determined the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the GLO has determined the proposed amendments would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments being proposed.

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§61.011,

61.015(b), and 61.022(c), which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase public beach access, parking, or use fees are consistent with state law.

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Ms. Deborah Cantu, *Texas Register* Liaison, Texas General Land Office, P. O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to deborah.cantu@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed under the Texas Natural Resources Code §§61.011 and 61.015(b), and 61.022(c) which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase public beach access, parking, or use fees are consistent with state law.

Texas Natural Resources Code §§61.011, 61.015(b), and 61.022(c) are affected by the proposed amendments.

§15.24. Certification Status of City of Port Aransas Dune Protection and Beach Access Plan.

(a) The City of Port Aransas has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The city's plan was adopted on February 15, 1995.

(b) The General Land Office certifies as consistent with state law the amendment to the City of Port Aransas plan that was adopted by the City Council of the City of Port Aransas on February 17, 2005, Resolution No. 2005-06. The resolution amended the plan to increase the beach user fees imposed for parking on the beach in fee areas designated in the plan.

§15.31. Certification Status of City of Corpus Christi Dune Protection and Beach Access Plan.

(a) The City of Corpus Christi has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The city's plan was adopted on August 10, 1993.

(b) The General Land Office certifies that the amendments to the city's plan adopted by the City Council on April 15, 2003, which includes the beach user fee section that was conditionally certified, are consistent with state law. Therefore, the General Land Office certifies that the entire plan is consistent with state law.

(c) The General Land Office certifies as consistent with state law the amendment to the City of Corpus Christi plan that was adopted by the City Council on April 12, 2005, Ordinance No. 026208. The ordinance amended the plan to revise the beach user fee plan incorporated as Appendix XVII to provide an increase in the beach user fees imposed for parking on the beach in fee areas designated in the plan.

§15.33. Certification Status of Nueces County Dune Protection and Beach Access Plan.

(a) Nueces County has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The county's plan was adopted on March 25, 1992 and amended on October 23, 1996.

(b) The General Land Office certifies that the dune protection portion of the La Concha master plan adopted by the Nueces County Commissioners Court on March 20, 1996, is consistent with state law.

(c) The General Land Office certifies that the dune protection portion of the Palms at Waters Edge master plan adopted by the Nueces County Commissioners Court on December 27, 1996, is consistent with state law.

(d) The General Land Office certifies that the dune protection section of the Mustang Island Episcopal Conference Center master plan adopted by the Nueces County Commissioner's Court on January 31, 2000 is consistent with state law.

(e) The General Land Office certifies as consistent with state law the amendment to Nueces County plan that was adopted by the Nueces County Commissioners Court on March 16, 2005, Order No. 20050032. The order amended the plan to increase the beach user fees imposed for parking on the beach in fee areas designated in the plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200503998

Larry L. Laine

Chief Clerk

General Land Office

Earliest possible date of adoption: October 23, 2005

For further information, please call: (512) 305-8598

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 17. STATE PENSION REVIEW BOARD

CHAPTER 605. STANDARDIZED FORM

40 TAC §605.1

The State Pension Review Board (hereafter referred to as the Board) proposes an amendment to §605.1, which adopts by reference the standard form identified below to assist in efficiently determining the actuarial soundness and current financial condition of public retirement systems, implement an early warning system analyzing quarterly information, and to assist in the conduct of the Board's business.

Background and Justification

This rule is proposed, in part, to comply with Texas Government Code, §801.201(c)(1), which requires the Board to adopt standardized forms to assist the Board in determining the actuarial soundness and current financial condition of public retirement systems. It is also adopted to comply with the Acts of 2005, General Appropriations Act, Art. I, State Pension Review Board, Rider 2, 79th Reg. Session, which directs the Board to develop an early warning system that will analyze the information requested by the form being added by this amendment to the list of Board-developed forms.

Fiscal Note

Ben Armendariz, Accountant for the Board, has determined that for the first five years the rule is in effect, there will be no fiscal

impact to the state or local governments as a result of administering and enforcing the proposed amendment.

Small and Micro-business Impact Analysis

Mr. Armendariz has also determined there will be no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Public Benefit

Virginia Smith, Executive Director of the State Pension Review Board has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be standardization and efficiency of reporting functions of public retirement systems as well as early detection of problems or issues related to the systems that may need to be addressed.

Public Comments

Written comments on the proposal may be submitted to Lynda Baker, State Pension Review, via mail to P.O. Box 13498, Austin, Texas 78711, or electronically to prb@prb.state.tx.us no later than 5:00 p.m. CST within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed pursuant to the authority provided under Texas Government Code §801.201(a) and (c) which provide as follows: §801.201(a) requires the board to adopt rules for the conduct of its business; and §801.201(c)(1) requires the board, by rule, to adopt a brief standard form that will assist the board in efficiently determining the actuarial soundness and current financial condition of a public retirement system.

No other code, article or statute is affected by the proposed amendment.

§605.1. Adoption of Standard Forms.

(a) The Board hereby adopts by reference the standard forms identified below under subsection (b) of this section to assist in efficiently determining the actuarial soundness and current financial condition of public retirement systems, to implement an early warning system addressing factors included in these forms, under subsection (b)(5) of this section, and to assist in the conduct of the Board's business.

(b) The standard forms hereby adopted by the Board are the following:

- (1) Pension System Registration - Form Series: PRB-100
- (2) Benefit and Membership Report - Form Series: PRB-200
- (3) Financial Statement Report - Form Series: PRB-300
- (4) Actuarial Report - Form Series: PRB-400
- (5) Quarterly Plan Report - Form Series: PRB-500

(c) These forms are available from the offices of the State Pension Review Board and on its website at <http://www.prb.state.tx.us/>.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 9, 2005.

TRD-200503984
Lynda Baker
Executive Assistant
State Pension Review Board
Proposed date of adoption: November 1, 2005
For further information, please call: (512) 463-1736



40 TAC §605.3

The State Pension Review Board (hereafter referred to as the Board) proposes an amendment to §605.3, regarding submission of forms, requiring public pension systems to submit quarterly information to the board. The form will assist the Board in implementing an early warning system and in efficiently determining the actuarial soundness and current financial condition of public retirement systems on a more frequent and current basis than has been previously required. As directed by the 79th Legislature the State Pension Review Board will develop an early warning system that will analyze for all actuarially funded public pension plans, the following (1) the market value of assets at the beginning and end of the quarter (2) the payments of benefits from the fund during the quarter (3) the contributions to the fund during the quarter (4) the number of new retirees during the quarter (5) the number of active members at the end of the quarter; and (6) any benefit changes to the fund implemented or considered during the quarter.

Background and Justification

This rule is proposed to comply with Texas Government Code, §801.201(c)(2) which requires the Board to require public retirement systems to complete and submit the standard forms, §801.202(1) and (2), requiring the Board to conduct continuing review and intensive studies of public retirement systems, and Acts of 2005, General Appropriations Act, Art. I, Rider 2, requiring the Board to develop an early warning system that addresses the factors regarding the actuarial and financial soundness of pension systems on a quarterly basis.

Fiscal Note

Ben Armendariz, Accountant for the Board, has determined that for the first five years the rule is in effect, there will be no fiscal impact to the state or local governments as a result of administering and enforcing the proposed amendment.

Small and Micro-business Impact Analysis

Mr. Armendariz has also determined that for each year of the first five years the section is in effect there will be no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Public Benefit

Virginia Smith, Executive Director of the State Pension Review Board, has determined that for each year of the first five years

the section is in effect the public benefit anticipated as a result of enforcing the section will be standardization and efficiency of reporting functions of public retirement systems as well as early detection of problems or issues related to the systems that may need to be addressed.

Public Comment

Written comments on the proposal may be submitted to Lynda Baker, State Pension Review, via mail to P.O. Box 13498, Austin, Texas 78711, or electronically to prb@prb.state.tx.us no later than 5:00 p.m. CST within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed pursuant to the authority provided under Texas Government Code §801.201(a) and (c), which provide as follows: §801.201(a) requires the board to adopt rules for the conduct of its business; and §801.201(c)(2) requires the board, by rule, to require a retirement system to include the standard forms with information required for the Board to conduct a review or study described in Texas Government Code §801.202(1) or (2).

No other code, article or statute is affected by the proposed amendment.

§605.3. Submission of Forms.

(a) A public retirement systems must complete and submit to the Board the standard forms identified as Form numbers PRB-100, PRB-200, PRB-300, [and] PRB-400, and PRB-500 in §605.1 regarding adoption of standard forms.

(b) The public system must submit the forms with the information the system submits to the Board as a result of reviews and studies conducted by the Board regarding the actuarial soundness and current financial condition of the fund the system administers.

(c) A public retirement system must complete and submit to the Board Form PRB-500 no later than the 45th date after each quarter ending March, June, September and December.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 9, 2005.

TRD-200503985
Lynda Baker
Executive Assistant
State Pension Review Board
Proposed date of adoption: November 1, 2005
For further information, please call: (512) 463-1736



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER H. RULES APPLICABLE TO A POLITICAL PARTY ACCEPTING CONTRIBUTIONS FROM CORPORATIONS OR LABOR ORGANIZATIONS

1 TAC §20.527

The Texas Ethics Commission adopts the amendment to §20.527, regarding the electronic filing of reports filed by political parties. The rule is adopted without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4273) and will not be republished.

The amendment would require the electronic filing of reports filed by political parties that accept contributions from corporations unless the political party qualifies for an exemption.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Government Code, Chapter 571, Section 571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200504004

David A. Reisman

Executive Director

Texas Ethics Commission

Effective date: October 2, 2005

Proposal publication date: July 29, 2005

For further information, please call: (512) 463-5800



PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER D. VOTING SYSTEM CERTIFICATION

1 TAC §81.60, §81.65

The Office of the Secretary of State, Elections Division, adopts an amendment to §81.60, concerning voting system examinations to require vendors to submit change logs with the application for certification of previously-certified voting systems and to provide that examiner reports shall be posted on the agency's web site. The amendment will give voting system examiners more information with which to review changes to previously-certified voting systems and to increase public awareness of the voting system certification process. The Office of the Secretary of State, Elections Division, also adopts new §81.65, concerning administrative certifications of minor modifications to previously certified voting systems. The rule will codify procedures for requested administrative certification of minor modifications to previously certified voting systems as authorized under §122.064 of the Texas Election Code.

The amendment and new section are adopted without changes to the text as proposed in the April 1, 2005, issue of the *Texas Register* (30 TexReg 1883 and 1884).

No comments were received concerning the amendment and new rule.

The amendment is adopted under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws.

Statutory Authority: Texas Election Code, Chapter 31, Subchapter A, §31.003. Texas Election Code, §122.001 is affected by this amendment.

The new rule is adopted pursuant to Texas Elections Code, §122.064(a), which requires the Secretary of State to review applications for approval of a modified design to a previously certified voting system and under Texas Election Code, Chapter 31, Subchapter A, §31.003, which authorizes the Office of the Secretary of State to promulgate rules to obtain uniformity in the interpretation and application of the Code.

Statutory Authority: Texas Elections Code, §31.003 and §122.064(a).

No other sections are affected by the amendments and new rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 9, 2005.

TRD-200503994

Ann McGeehan

Director of Elections

Office of the Secretary of State

Effective date: September 29, 2005

Proposal publication date: April 1, 2005

For further information, please call: (512) 463-5650



1 TAC §81.63

The Office of the Secretary of State adopts the repeal of §81.63, concerning the review of previously-certified voting systems under House Bill 1419, 77th Session, 2001. The repeal will delete a section whose provisions already have been carried out by the Secretary of State. The rule had set the time frame and procedures for the mandated re-review of voting systems. The repeal will eliminate this outdated rule.

The repeal was proposed in the April 1, 2005, issue of the *Texas Register* (30 TexReg 1883).

No comments were received concerning the repeal.

The repeal is adopted under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws.

Statutory Authority: Texas Election Code, §31.003.

Texas Election Code, §31.003, is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 9, 2005.

TRD-200503990

Ann McGeehan

Director of Elections

Office of the Secretary of State

Effective date: September 29, 2005

Proposal publication date: April 1, 2005

For further information, please call: (512) 463-5650



SUBCHAPTER E. ELECTION DAY PROCEDURES

1 TAC §81.71

The Office of the Secretary of State adopts the repeal of §81.71, concerning use of an election worker affidavit in lieu of identification. The repeal was proposed in the March 25, 2005, issue of the *Texas Register* (30 TexReg 1719).

The repeal is necessary to establish conformity between state election voter identification requirements and the voter identification requirements of the federal Help America Vote Act of 2002. The repeal will eliminate possible confusion from a rule whose

statutory rationale, Section 63.010 of the Code, has been repealed. The rule had allowed election judges and clerks to attest to a voter's identity if the voter had no other form of identification.

No comments were received concerning the repeal.

The repeal is adopted under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws.

The Texas Election Code, §63.0101, is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 9, 2005.

TRD-200503989

Ann McGeehan

Director of Elections

Office of the Secretary of State

Effective date: September 29, 2005

Proposal publication date: March 25, 2005

For further information, please call: (512) 463-5650



SUBCHAPTER I. IMPLEMENTATION OF THE HELP AMERICA VOTE ACT OF 2002

1 TAC §§81.172 - 81.174

The Office of the Secretary of State, Elections Division, adopts amendments to §§81.172 - 81.174, concerning procedures for provisional balloting as required under Section 302 of the federal Help America Vote Act of 2002 ("HAVA"). The amendments are adopted without changes to the text as proposed in the April 1, 2005, issue of the *Texas Register* (30 TexReg 1885).

The amendments will harmonize the provisional voting procedures with one another. The amendments adopt further changes suggested by counties and local political subdivisions. The adoption clarifies the transfer responsibilities and procedures between the custodian of election records (and/or early voting ballot board judge) and voter registrar, and addresses transfer procedures between voter registrars when provisional ballots are cast in the wrong precinct. The amendments add language from the late ballot counting rules of 1 TAC §81.37 to ensure consistency when provisional ballots are counted electronically, and harmonizes the rules with changes in the provisional voting forms that have been created by the Secretary of State.

No comments concerning the amendments were received.

The amendments are adopted under the Texas Election Code, §31.010, which provides the Office of the Secretary of State with the authority to adopt rules as necessary to implement the federal Help America Vote Act of 2002.

Statutory Authority: Texas Election Code, Chapter 31, Subchapter A, §31.003.

Texas Election Code §63.011 is affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 9, 2005.

TRD-200503995

Ann McGeehan

Director of Elections

Office of the Secretary of State

Effective date: September 29, 2005

Proposal publication date: April 1, 2005

For further information, please call: (512) 463-5650



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 2. MEDICAID VISION CARE PROGRAM

1 TAC §§354.1015, 354.1021, 354.1023

The Health and Human Services Commission (HHSC or Commission) adopts the amendments to §354.1015, Benefits and Limitations; §354.1021, Additional Claims Information Requirements; and §354.1023, Optometric Services Provider, without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4283), and will not be republished.

The 79th Legislature, Regular Session, 2005, appropriated funding for additional vision care services available as a benefit to the adult Medicaid population. The rules were amended to be consistent with the appropriations. Section 354.1015, Benefits and Limitations, describes the benefits and limitations for vision care services. The amendments to the rule add language to describe additional vision care benefits available to adult recipients age 21 years and older. These benefits include prosthetic and non-prosthetic eyewear, repairs for prosthetic lenses, and the replacement criteria for eyewear.

Section 354.1021, Additional Claims Information Requirements, details the information that is necessary to process claims for vision care services. The rule is amended to add language describing additional requirements for information that is necessary to process claims appropriately.

Section 354.1023, Optometric Services Provider, defines an optometric service provider and describes who may be reimbursed for vision care services through Medicaid. The amendments to the rule add language to include vision services beyond the examination.

The HHSC received two comments during the 30-day comment period. One comment from the Private Providers Association of Texas expressed support for the proposed amendments to

§§354.1015, 354.1021, and 354.1023. The second comment, along with the Commission's response, follows.

Comment: The Coalition for Nurses in Advanced Practice expressed concern regarding §354.1021(a)(6). The Coalition for Nurses in Advanced Practice contends that an advanced practice nurse may identify the need for vision care and "write orders for those services." The Coalition referred to the Texas Administrative Code, specifically 40 T.A.C. §19.1205(c), which states that, "In a Medicaid nursing facility, any required physician task may also be satisfied when performed by a nurse practitioner, clinical nurse specialist, or physician assistant, who is not an employee of the facility but who is working in collaboration with a physician."

Response: HHSC acknowledges the comment. The rule revisions for vision services are consistent with HHSC's Medicaid appropriations and restore the rule language that was in place prior to the adult vision benefits changes in 2003. The Commission will consider the suggestion from the commenter for the future after HHSC staff completes a full analysis of the proposal. No change was made to the rule in response to these comments.

The amendments are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide the Commission with the authority to administer the federal medical assistance program (Medicaid) in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón

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Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



DIVISION 4. MEDICAID CHIROPRACTIC SERVICES

1 TAC §354.1052

The Health and Human Services Commission (HHSC or Commission) adopts the amendment to §354.1052, Authorized Chiropractic Services, without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4285), and will not be republished.

The 79th Legislature, Regular Session, 2005, appropriated funding for the addition of services provided by a doctor of chiropractic to adult Medicaid recipients. Section 354.1052 was amended to be consistent with the appropriation. The amendment removes the language that limits the provision of services provided by a doctor of chiropractic to Medicaid recipients under the age of 21 years and eligible for the Early and Periodic Screening, Diagnostic, and Treatment program. Section 354.1052, Authorized

Chiropractic Services, details who may deliver chiropractic services and receive reimbursement for those services through the medical assistance program. In addition, the rule describes the chiropractic service benefits reimbursed through Medicaid.

The HHSC received one comment from the Private Providers Association of Texas in support of the proposed amendment to §354.1052 during the 30-day comment period. The rule was not modified in response to the comment.

The amendment is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide the Commission with the authority to administer the federal medical assistance program (Medicaid) in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 8. PODIATRY SERVICES

1 TAC §354.1102

The Health and Human Services Commission (HHSC or Commission) adopts the amendment to §354.1102, Authorized Podiatry Services, without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4286), and will not be republished.

The 79th Legislature, Regular Session, 2005, appropriated funds for services provided by a licensed podiatrist as a benefit available to the adult Medicaid population. The rule was amended to be consistent with the appropriation. The amendment removes the language that limits the provision of services provided by a physician or surgeon specializing in podiatric medicine to Medicaid recipients under the age of 21 years and eligible for the Early and Periodic Screening, Diagnostic, and Treatment program. Section 354.1102, Authorized Podiatry Services, describes the podiatry service benefits reimbursed through Medicaid; and details who may deliver podiatry services and who may receive reimbursement for those services through the medical assistance program (Medicaid).

The HHSC received one comment from the Private Providers Association of Texas during the 30-day comment period. The commenter offered support for the proposed amendment to §354.1102. The rule was not modified in response to the comment.

The amendment is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a),

which provide the Commission with the authority to administer the federal medical assistance program (Medicaid) in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 15. HEARING AID SERVICES

1 TAC §§354.1231, 354.1233, 354.1235

The Health and Human Services Commission (HHSC or Commission) adopts the amendments to §354.1231, Benefits and Limitations; §354.1233, Requirements for Hearing Aid Services; and §354.1235, Requirements for Provider Participation, without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4287), and will not be republished.

The 79th Legislature, Regular Session, 2005, appropriated funding for additional hearing aid services available as benefits to the adult Medicaid population. The rules were amended to be consistent with appropriations. The proposed amendments to §§354.1231, 354.1233, and 354.1235 revise the language for the hearing aid services available to Medicaid recipients age 21 years and older.

Section 354.1231, Benefits and Limitations, describes the benefits and limitations for hearing aid services. The amendments to the rule add language to describe the additional hearing aid benefits available to Medicaid recipients age 21 years and older, which include dispensing and fitting of hearing aids. The amendments also set out the criteria for the service.

Section 354.1233, Requirements for Hearing Aid Services, outlines the requirements for hearing aid services. The rule defines who will be reimbursed for delivering hearing aid services and adds language to define the criteria for hearing evaluation, hearing aids, warranty, packaging, and post-fitting and hearing aid follow up visits.

The requirements for hearing aid service providers are detailed in §354.1235, Requirements for Provider Participation. The rule is amended to include hearing aid fitters and dispensers. In addition, new language is added listing the criteria for hearing aid fitters and dispensers participation in the Texas Medicaid program.

The HHSC received a comment from the Private Providers Association of Texas during the 30-day comment period. The commenter offered support for the proposed amendments to §§354.1231, 354.1233, and 354.1235. In addition to the comment received in support of the amendments to the rule, the Commission received comments from the Texas Hearing Aid Association, the Texas Academy of Audiologists, the

Coalition for Nurses in Advanced Practice, and seven providers. Summaries of the comments and HHSC's responses follow.

Comment: HHSC received a comment from the Coalition for Nurses in Advanced Practice regarding §354.1231 recommending the addition of an exact reference in the *Code of Federal Regulations* to assist "readers in locating that cross reference."

Response: The Commission acknowledges the comment. The 79th Legislature, Regular Session, 2005, appropriated funding to restore hearing aid services to the same level previously available for the adult Medicaid population in 2003, which is the purpose and scope of the current amendments. HHSC will consider the recommendations for a future amendment to the rule. No change was made to the rule in response to the comment.

Comment: A comment from the Coalition for Nurses in Advanced Practice expressed concern regarding §§354.1231(a)(1), 354.1233(b), and 354.1233(b)(5). The Coalition for Nurses in Advanced Practice contends that an advanced practice nurse may identify the need for hearing aid services and "write orders for those services." The Coalition referred to the Texas Administrative Code, specifically 40 T.A.C. §19.1205(c), which states that, "In a Medicaid nursing facility, any required physician task may also be satisfied when performed by a nurse practitioner, clinical nurse specialist, or physician assistant, who is not an employee of the facility but who is working in collaboration with a physician."

Response: The Commission acknowledges the comment. The 79th Legislature, Regular Session, 2005, appropriated funding to restore hearing aid services to the same level previously available for the adult Medicaid population in 2003, which is the purpose and scope of the current amendments. HHSC will consider the recommendations for the future after a full analysis of the issue has been completed and notice of any proposed amendment given to the public. No change was made to the rule in response to these comments.

Comment: HHSC received comments from three providers expressing concern that §354.1231(a) does not indicate reimbursement for hearing evaluations.

Response: The Commission acknowledges the comment. The 79th Legislature, Regular Session, 2005, appropriated funding to restore hearing aid services to the same level previously available for the adult Medicaid population in 2003, which is the purpose and scope of the current amendments. HHSC will consider the recommendations for the future after a full analysis of the issue of reimbursement for hearing evaluations has been completed and notice of any proposed amendment given to the public. No change was made to the rule in response to these comments.

Comment: Comments were received by HHSC from three providers and the Texas Academy of Audiologists regarding §354.1231(a)(2)-(3) and §354.1233(a)(2). The commenters expressed concern about the absence of language in the rule to indicate that audiologists should also be reimbursed for the fitting and dispensing of hearing aids.

Response: The Commission acknowledges the comment. The 79th Legislature, Regular Session, 2005, appropriated funding to restore hearing aid services to the same level previously available for the adult Medicaid population in 2003, which is the purpose and scope of the current amendments. HHSC will consider the recommendations for the future after a full analysis of reimbursement for audiologists has been completed and notice of

any proposed amendment given to the public. No change was made to the rule in response to these comments.

Comment: The Commission received comments from three providers regarding §354.1231(b)(2). The commenters recommended the addition of a hearing aid check with a hearing evaluation to determine whether a particular hearing aid is appropriate to address the hearing loss.

Response: The Commission acknowledges the comment. The 79th Legislature, Regular Session, 2005, appropriated funding to restore hearing aid services to the same level previously available for the adult Medicaid population in 2003, which is the purpose and scope of the current amendments. HHSC will consider the recommendations for the future after a full analysis of the issue has been completed and notice of any proposed amendment given to the public. No change was made to the rule in response to these comments.

Comment: The Commission received comments from two providers about §354.1231(b)(4). The commenters expressed concern that Medicaid does not reimburse for batteries used in hearing aids. The commenters contend that Medicaid reimburses for batteries for cochlear implants and, therefore, should reimburse for batteries for hearing aids.

Response: The Commission acknowledges the comment. The 79th Legislature, Regular Session, 2005, appropriated funding to restore hearing aid services to the same level previously available for the adult Medicaid population in 2003, which is the purpose and scope of the current amendments. HHSC will consider the recommendations for the future after a full analysis of reimbursement for batteries has been completed and notice of any proposed amendment given to the public. No change was made to the rule in response to these comments.

Comment: HHSC received comments from four providers and the Texas Academy of Audiology regarding §354.1231(b)(5) expressing concern regarding "home visits" for hearing evaluations. The commenters suggested that hearing evaluations performed in the home setting should be done only when medically necessary and not for convenience. The commenters contend that hearing evaluations conducted at home are not accurate and do not comport with recognized professional standards.

Response: The Commission acknowledges the comment. The 79th Legislature, Regular Session, 2005, appropriated funding to restore hearing aid services to the same level previously available for the adult Medicaid population in 2003, which is the purpose and scope of the current amendments. HHSC will consider the recommendations for the future after a full analysis of hearing evaluations conducted in the home is completed. No change was made to the rule in response to these comments and notice of any proposed amendment given to the public.

Comment: Comments from three providers, a hearing aid manufacturer, and the Texas Hearing Aid Association were received regarding §354.1231(b)(8). The commenters expressed concern about the use of American-based manufacturers versus foreign-based manufacturers. One commenter requested clarification regarding "whether the hearing aid must be physically manufactured in the United States" or whether the manufacturer must be domiciled in the United States. In addition, one commenter questioned how the quality of American made and foreign made hearing aids are measured against each other.

Response: HHSC acknowledges the comment. It is the preference of the distributing provider of the hearing aid to recommend the appropriate product to meet the individual needs of each client. The particular hearing aid for a client may be available in both an American-based version and foreign-based version. This rule states when price and quality are comparable for a hearing aid that meets the particular needs of the client, the American-based hearing aid will be reimbursed by Medicaid. No change was made to the rule in response to these comments.

Comment: HHSC received comments from five providers and the Texas Academy of Audiologists regarding §354.1231(b)(10). The commenters expressed concern that hearing aids are limited to eligible recipients whose "air conduction puretone average in the better ear is 45dB or greater." The commenters state that the hearing loss standard is 25dB HL, and they recommend lowering the air conduction puretone average to 25dB.

Response: The Commission acknowledges the comment. The 79th Legislature, Regular Session, 2005, appropriated funding to restore hearing aid services to the same level previously available for the adult Medicaid population in 2003, which is the purpose and scope of the current amendments. HHSC will consider the recommendations for the future after a full analysis of the hearing loss standard is completed and notice of any proposed amendment given to the public. No change was made to the rule in response to these comments.

Comment: The Texas Hearing Aid Association offered comment about §354.1233(a)(2) and §354.1233(b)(6) requesting that the state seek a waiver to allow licensed fitters and dispensers to receive reimbursement from Medicaid for hearing evaluations.

Response: The Commission acknowledges the comment. The 79th Legislature, Regular Session, 2005, appropriated funding to restore hearing aid services to the same level previously available for the adult Medicaid population in 2003, which is the purpose and scope of the current amendments. HHSC will consider the recommendations for the future after a full analysis of a waiver is completed and notice of any proposed amendment given to the public. No change was made to the rule in response to these comments.

Comment: One comment from a provider was received regarding §354.1233(b)(2) expressing concern that an "otologic exam" must be completed prior to any hearing evaluation if the hearing evaluation is to be paid by Medicaid.

Response: The Commission acknowledges the comment. The 79th Legislature, Regular Session, 2005, appropriated funding to restore hearing aid services to the same level previously available for the adult Medicaid population in 2003, which is the purpose and scope of the current amendments. HHSC will consider the recommendations for the future after a full analysis of the issue of otologic exams is completed and notice of any proposed amendment given to the public. No change was made to the rule in response to these comments.

Comment: A comment was received from a provider regarding §354.1233(b) and the term "hearing evaluation." The commenter suggested adding the word "aid" or defining the term.

Response: The Commission acknowledges the comment. The 79th Legislature, Regular Session, 2005, appropriated funding to restore hearing aid services to the same level previously available for the adult Medicaid population in 2003, which is the purpose and scope of the current amendments. HHSC will consider

the recommendations for the future after a full analysis of the issue raised by the comment is completed and notice of any proposed amendment given to the public. No change was made to the rule in response to these comments.

Comment: HHSC received comments from five providers and the Texas Academy of Audiologists regarding §354.1233(b). The commenters expressed concern about the requirement that a recipient must visit a physician prior to seeing an audiologist for a hearing evaluation. The audiologist will conduct the hearing evaluation. The commenters recommend allowing clients to seek an audiologist for the hearing evaluation without working through the physician to then be referred to an audiologist.

Response: The Commission acknowledges the comment. The 79th Legislature, Regular Session, 2005, appropriated funding to restore hearing aid services to the same level previously available for the adult Medicaid population in 2003, which is the purpose and scope of the current amendments. HHSC will consider the recommendations for the future after a full analysis of the issue raised by the comment is completed and notice of any proposed amendment given to the public. No change was made to the rule in response to these comments.

Comment: HHSC received a comment from a provider regarding §354.1233(c)(4)(B) regarding a rental fee that may be charged by the provider for a hearing aid during the trial period. The commenter suggests that a rental fee is not necessary and further explains that when the hearing aid is returned to the manufacturer, "the State of Texas will receive a refund of the money spent for purchase."

Response: The Commission acknowledges the comment. The 79th Legislature, Regular Session, 2005, appropriated funding to restore hearing aid services to the same level previously available for the adult Medicaid population in 2003, which is the purpose and scope of the current amendments. HHSC will consider the recommendations for the future after a full analysis of the issue of rental fees during trial periods is completed and notice of any proposed amendment given to the public. No change was made to the rule in response to the comment.

Comment: The Commission received comments from three providers and the Texas Academy of Audiologist concerning §354.1233(c)(6). The commenters requested clarification of "counseling" for hearing aids.

Response: The Commission acknowledges the comment. The 79th Legislature, Regular Session, 2005, appropriated funding to restore hearing aid services to the same level previously available for the adult Medicaid population in 2003, which is the purpose and scope of the current amendments. HHSC will consider the recommendations for the future after a full analysis is completed and notice of any proposed amendment given to the public. No change was made to the rule in response to these comments.

Comment: The Commission received comments from five providers regarding §354.1235(b)(2) and the requirement that audiologists be certified by ASHA (American Speech-Language Hearing Association).

Response: The Commission acknowledges the comment. The 79th Legislature, Regular Session, 2005, appropriated funding to restore hearing aid services to the same level previously available for the adult Medicaid population in 2003, which is the purpose and scope of the current amendments. HHSC will consider the recommendations for the future after a full analysis of ASHA

certification is completed and notice of any proposed amendment given to the public. No change was made to the rule in response to these comments.

The amendments are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide the Commission with the authority to administer the federal medical assistance program (Medicaid) in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón

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CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8063

The Health and Human Service Commission (HHSC) adopts amended §355.8063, Reimbursement Methodology for Inpatient Hospital Services. The amended rule is adopted without changes to the proposed text as published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4399) and will not be republished.

The amendment to §355.8063 is consistent with the amounts appropriated to the Texas Medicaid Program for state fiscal years 2006 and 2007, the proposed amendment also extends two provisions that would otherwise expire on August 31, 2005 to August 31, 2007. The amendment removes obsolete language, including replacing the term "department" with HHSC or the Commission. The first extended provision identifies the time period during which HHSC will not rebase or recalculate the standard dollar amount (SDA). The second extended provision identifies the time period during which HHSC will not apply a cost-of-living index to the SDA.

In addition, the proposed amendment increases the limit on the amount of high volume payments made to non-state owned or operated, non-public, hospitals located in urban counties with Medicaid days greater than 160% of the mean Medicaid days. Consistent with the amounts appropriated to the Texas Medicaid Program, the amendment eliminates other high volume payments.

HHSC received three comments regarding the proposed rule during the comment period, which included a public hearing on

August 30, 2005, from the Texas Hospital Association (THA). A summary of the comments and HHSC's responses follows.

Comment: THA requested that the state consider adding a title to subsection U in the inpatient rule to clarify the intent of the section. The association provided an example of a title to be used, "Medicaid high volume payment to hospitals." The association feels that this will provide clarity to the rule.

Response: HHSC acknowledges the comment and will consider the comment for a future amendment to the rule.

Comment: THA suggested that when there is a reduction in hospital inpatient and outpatient rates, the rules should reflect the reduction of the rate.

Response: HHSC acknowledges the comment, which concerns rate reductions. The comment actually applies to the rates that are in effect for State Fiscal Year 2005. However, because this amendment does not address rate reductions, HHSC will consider the comment for any future amendment to this rule that addresses a rate reduction.

Comment: THA asked for an explanation of the increase in the Intergovernmental Transfer (IGT) Funds amount associated with the rule. THA also asked that the Commission provide a worksheet to reflect the increase in the IGTs.

Response: The increase in the IGT amount was due to the increase in the Federal Medical Assistance Percentage (FMAP) percentage from the SFY 2004-2005 biennium to the SFY 2006-2007 biennium. HHSC will provide THA with the worksheet that shows the increase in the IGT funds. The Commission acknowledges THA's concerns and will provide THA with the requested information.

No changes were made to the rule in response to these comments.

The amended rule is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance program (Medicaid) in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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1 TAC §355.8065

The Health and Human Service Commission (HHSC or Commission) adopts amended §355.8065, Additional Reimbursement to Disproportionate Share Hospitals. The amended rule is adopted without changes to the proposed text as published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4406) and will not be republished.

The amendment to §355.8065 changes the current applied conversion factors for hospitals based on available funds. The amendment is consistent with the amounts appropriated to the Texas Medicaid Program and is necessary to support the efforts of local safety net hospitals to provide health care services for the indigent population in their communities.

The amendment also updates the names of Health and Human Service agencies to reflect the consolidation mandated by House Bill 2292, 78th Legislature, Regular Session, 2003. The amendment replaces references to the Texas Department of Health and the Texas Department of Mental Health and Mental Retardation with references to the Texas Department of State Health Services or DSHS. References to the Bureau of Emergency Management are changed to "Office of EMS/Trauma Systems Coordination."

HHSC received one comment concerning the proposed rule during the comment period, which included a public hearing on August 30, 2005, from the Texas Hospital Association (THA). The comment and HHSC's response follows.

Comment: THA requested an explanation for the increase in funding for safety net hospitals and asked that HHSC provide a worksheet reflecting the increase.

Response: Funding is being increased to cover changes in the federal match Texas has received in the past several years. The Commission acknowledges the comment and will provide THA with the requested information.

No changes were made to the rule in response to this comment.

The amended rule is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 9. SEED QUALITY

SUBCHAPTER B. CLASSIFICATION OF LICENSES

4 TAC §9.3

The Texas Department of Agriculture (the department) adopts an amendment to §9.3, concerning the expiration date for a Vegetable Seed license, without changes to the proposal published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4413). House Bill 901, enacted by the 79th Texas Legislature, 2005, amended §61.013 (d) of the Texas Agriculture Code (the Code) to change the August 31 expiration date for vegetable seed licenses to the first anniversary of the date of license issuance or renewal. The amendment to §9.3 is adopted to remove the reference to August 31 as the expiration date for all vegetable seed licenses. In addition, the amendment will eliminate confusion for the applicant about the correct license fee amount, and will allow the department to more evenly distribute licensing workflow throughout the year, thereby providing a better turnaround time to customers. The amendment deletes language in paragraph (e)(1) that provided for an August 1 expiration date.

No comments were received on the proposal.

The amendment to §9.3 is adopted under the Texas Agriculture Code (the Code), §61.002, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the efficient enforcement of the Code, Chapter 61; the Code §61.013, which provides that person may not sell or offer, expose, or otherwise distribute for sale vegetable seed for planting purposes in this state without a vegetable seed license issued by the department, and provides the department with the authority to set and collect a fee for issuance of a vegetable seed license.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Department of Agriculture

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CHAPTER 15. EGG LAW

4 TAC §15.4

The Texas Department of Agriculture (the department) adopts amendments to §15.4, concerning prorated license fees for egg dealer/wholesaler and egg processor licenses, without changes to the proposal published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4414). House Bill 901, enacted by the 79th Texas Legislature, 2005, amended §132.024 of the

Texas Agriculture Code (the Code) to change the expiration date for egg dealer/wholesaler and egg processor licenses from August 31 of each year to the first anniversary of the date of license issuance or renewal. The amendments to §132.024 of the Code eliminate the need for the department to prorate fees for egg licenses issued for only part of the year. The amendments to §15.4 are adopted to eliminate the requirement for prorating license fees. In addition, the amendments will eliminate confusion for the applicant about the correct license fee amount, and will allow the department to more evenly distribute licensing workflow throughout the year, thereby providing a better turnaround time to customers. The amendments delete subsection (d), that provided for proration of licenses and renumber old subsection (e) as new subsection (d).

Comments were received from the Texas Egg Council in support of the proposal.

The amendments to §15.4 are adopted under the Code, §132.003, which provides the department with the authority to administer, the Code, Chapter 132, relating to Eggs, and adopt and enforce rules necessary to administer Chapter 132; the Code, §132.026, which authorizes the department to set the fee for a dealer-wholesaler license by rule; and the Code, §132.027 which authorizes the department to set the fee for a processor license by rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 22. NURSERY PRODUCTS AND FLORAL ITEMS

4 TAC §22.2, §22.3

The Texas Department of Agriculture (the department) adopts amendments to §22.2 concerning expiration dates for Nursery/Floral licenses and §22.3 concerning prorated Nursery/Floral license fees, without changes to the proposal filed in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4414). The amendments to §22.2 are adopted to change all Nursery/Floral license expiration dates from October 31 to the last day of the month corresponding to the license anniversary date. The amendments to §22.3 are adopted to eliminate the requirement for prorated license fees. In addition, the amendments are adopted to clarify the correct license fee amount for the applicant, and to allow the department to more evenly distribute licensing workflow throughout the year, which will provide for a better turnaround time to customers.

No comments were received on the proposal.

The amendments to §22.2 and §22.3 are adopted under Texas Agriculture Code (the Code), §71.057, which provides that a nursery dealer or nursery agent must register with the department under this section before offering for sale or lease or otherwise distributing a nursery product, and that a nursery dealer or nursery agent may apply for registration or renewal of registration by submitting an application prescribed by the department and an annual fee; and the Code, §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

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CHAPTER 24. TEXAS AGRICULTURAL FINANCE AUTHORITY: FARM AND RANCH FINANCE PROGRAM

4 TAC §24.11

The Board of Directors (the Board) of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture adopts an amendment to §24.11, concerning the Authority's Farm and Ranch Finance Program, without changes to the proposal as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3492).

The amendment is adopted to correct information regarding where copies of the Authority's credit policy may be obtained. The amendment provides that copies of the credit policy may be obtained from the Authority.

No comments were received on the proposal.

The amendment to §24.11 is adopted under the Texas Agriculture Code, §59.022, which provides the Authority's Board with the authority to adopt rules it considers necessary to administer the Farm and Ranch Finance Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 8, 2005.

TRD-200503949

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: September 28, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 463-4075

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CHAPTER 25. TEXAS AGRICULTURAL FINANCE AUTHORITY: RURAL DEVELOPMENT

The Board of Directors (Board) of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture adopts amendments to Chapter 25, Subchapter A (Subchapter A), §§25.3 - 25.11, concerning the Authority's Rural Development Finance Program, and the repeal of Chapter 25, Subchapter B (Subchapter B), §§25.20 - 25.34, concerning the Authority's Private Activity Bond Financing Program, without changes to the proposal as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3492).

The amendments to Subchapter A are adopted to clarify eligibility requirements and requirements for the use of the program and to make the program more efficient. The amendments are also adopted to make Subchapter A consistent with the current operation of the program as a rural municipal finance program that provides financial assistance to city and county governments, economic development corporations, hospital districts, rail districts, utility districts, special districts, agricultural districts, and private water and wastewater corporations in rural areas to improve or assist in the economic development of the rural area. In addition, the amendments to Subchapter A will provide a more efficient program to further create an economic benefit to rural areas of the state and to generate a greater number of eligible applicants for the Authority's Rural Development Finance Program.

The amendments to §25.3 change the definition of "Applicant" to delete references to business entities, change the definition of "Commitment" to make that definition consistent with the current operation of the program, and delete the definition of "Guaranteed loan amount." Section 25.7(a) is amended to delete paragraph (6), which relates to applicants that are business entities. Section 25.8 is amended to delete language relating to the timeframe to close a commitment. Section 25.9 and §25.10 are amended to delete language that relates to business entities, making the section consistent with the current operation of the program. Section 25.11 is amended to correct the information regarding where copies of the Authority's credit policy may be obtained.

The repeal of all sections in Subchapter B is adopted to delete unnecessary sections. The Authority's Private Activity Bond Financing Program is no longer in operation and the rules for this program are no longer needed.

No comments were received on the proposal.

SUBCHAPTER A. RURAL DEVELOPMENT FINANCE PROGRAM

4 TAC §§25.3, 25.7 - 25.11

The amendments to §25.3 and §§25.7 - 25.11 are adopted under the Texas Agriculture Code (the Code) §58.022, which provides the Authority's Board with the authority to adopt rules and

procedures necessary for the administration of its programs including the setting and collection of fees in connection with the program; and, the Code §58.023, which provides the Authority's Board with the authority to adopt rules to establish criteria for eligibility of applicants under the Authority's financial assistance programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 8, 2005.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: September 28, 2005
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For further information, please call: (512) 463-4075

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SUBCHAPTER B. PRIVATE ACTIVITY BOND FINANCING PROGRAM

4 TAC §§25.20 - 25.34

The repeal of §§25.20 - 25.34 is adopted under the Texas Agriculture Code (the Code), §58.022, which provides the Authority's Board with the authority to adopt rules and procedures necessary for the administration of its programs including the setting and collection of fees in connection with the program; and, the Code §58.023, which provides the Authority's Board with the authority to adopt rules to establish criteria for eligibility of applicant and lenders under the Authority's financial assistance programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 8, 2005.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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CHAPTER 26. TEXAS AGRICULTURAL FINANCE AUTHORITY: LINKED DEPOSIT PROGRAM

4 TAC §26.12

The Board of Directors (the Board) of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture adopts an amendment to §26.12, concerning the Authority's Linked Deposit Program, without changes to the proposal

as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3495).

The amendment is adopted to correct information regarding where copies of the Authority's credit policy may be obtained. The amendment provides that copies of the credit policy may be obtained from the Authority.

No comments were received on the proposal.

The amendment to §26.12 is adopted under the Texas Agriculture Code (the Code), §44.007, which provides the Authority's Board with the authority to adopt rules for the loan portion of the Linked Deposit Program; and the Code, §58.022, which provides the Authority's Board with authority to adopt rules and procedures necessary for the administration of its programs, including the Linked Deposit Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 8, 2005.

TRD-200503952

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: September 28, 2005

Proposal publication date: June 17, 2005

For further information, please call: (512) 463-4075



CHAPTER 28. TEXAS AGRICULTURAL FINANCE AUTHORITY: FINANCIAL ASSISTANCE PROGRAM RULES

The Board of Directors (the Board) of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture adopts amendments to §§28.2, 28.7 - 28.11, and 28.15, and the repeal of §28.16, concerning the Authority's Financial Assistance Program. Section 28.15 is adopted with changes to the proposal as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3495). Section 28.2 and §§28.7 - 28.11 and the repeal of §28.16 are adopted without changes and will not be republished.

The amendments are adopted to clarify eligibility requirements and requirements for the use of loan proceeds and to make the program more efficient. More specifically, the amendments are adopted to delete language relating to new loans, and modify the sections that relate to renewals to make the sections consistent with the current operation of the Financial Assistance Program. Under the existing program, no new loans will be made, the extension of credit is limited to renewals or extensions of existing loans. In addition, the amendments are adopted to provide a more efficient program to further create an economic benefit to rural areas of the state. The repeal of §28.16, relating to criteria for a direct loan, is adopted to delete unnecessary language. Direct loans are no longer being offered under the program.

Section 28.2 is amended to make this section consistent with current law. Section 28.7 is amended to make the section consistent with the current operation of the financial assistance program.

Section 28.8 is amended to clarify that only applications for renewal of existing loans are being accepted under the program. In §28.8(d), an amendment is made to make this subsection consistent with current law relating to approval of an application by the board. Section 28.9 is amended to provide that program staff has the sole discretion to determine what documents are acceptable to show information required of an applicant. Section 28.10 is amended to clarify that financial assistance is limited to a renewal of an existing obligation and to the amount of or participation in an existing obligation. Section 28.11 is amended to correct the information relating to where copies of the Authority's Credit Policy and Procedure may be obtained. Section 28.15 is amended to make this subsection consistent with current law relating to approval of an application by the board. This section is adopted with changes. The words "of this title" at the end of subsection (f) are deleted to correct an error. These words should have been shown as deleted language in the proposal.

No comments were received on the proposal.

4 TAC §§28.2, 28.7 - 28.11, 28.15

The amendments to §§28.2, 28.7 - 28.11 and 28.15 are adopted under the Texas Agriculture Code, §58.022, which provides the Authority's Board with authority to adopt rules and procedures necessary for the administration of its programs.

§28.15. Criteria for Approval of a Participation Purchased.

(a) Eligibility requirements. The Authority may purchase an undivided interest in a loan made by a lender provided that:

(1) the project meets the eligibility criteria as defined in §28.7 of this title (relating to Project Eligibility Requirements);

(2) the project meets the guidelines of the Authority's Credit Policy and Procedures document incorporated by reference herein as stated in §28.11(d) of this title (relating to Criteria for Approval of Financial Assistance);

(3) the undivided interest purchased by the Authority does not exceed the maximum amount as stated in §28.10(b) of this title (relating to General Terms and Conditions of the Authority's Financial Assistance); and

(4) the lender meets the eligibility criteria as defined in §28.13 of this title (relating to Eligible Private Lenders) and shall service the loan as defined in §28.12 of this title (relating to Loan Administration).

(b) Interest rate. The participation purchased by the Authority shall be at the same interest rate as the original loan made by the lender, unless a different rate is approved by the board or its designee.

(c) Written agreement. The participation purchased by the Authority shall be evidenced by a Participation Agreement supplied by the Authority and executed by both the lender and the Authority.

(d) Required documentation. The lender must submit a complete credit package, including the lender's credit analysis, borrower's financial information and other documents necessary for the Authority to evaluate the borrower's financial condition. If the lender has already made the loan, a copy of all collateral and security documents should be submitted with the application.

(e) Staff review. Staff will review the credit package for completeness and will notify the lender of any additional information required. When all required information has been received, staff will conduct a credit review, evaluate the technical and market feasibility of the project, and examine the benefits of the project for Texas agriculture and economic growth in the state.

(f) Board review. Staff will submit a report on each participation to be purchased to the board, which shall include a recommendation for approval or denial. If staff determines that a participation does not meet the minimum underwriting standards established in the Credit Policy and Procedures, then staff shall notify the lender in writing to this effect, and shall advise the lender of which minimum underwriting standards are not met. The lender may resubmit the participation application for further consideration at such time as the minimum standards are met. Approval of a participation will be by a majority of board members present.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200503953
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075



4 TAC §28.16

The repeal of §28.16 is adopted under the Texas Agriculture Code, §58.022, which provides the Authority's Board with authority to adopt rules and procedures necessary for the administration of its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075



CHAPTER 30. TEXAS AGRICULTURAL FINANCE AUTHORITY: YOUNG FARMER LOAN GUARANTEE PROGRAM SUBCHAPTER A. GENERAL PROCEDURES

4 TAC §30.12

The Board of Directors (the Board) of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture adopts an amendment to §30.12, concerning the Authority's Young Farmer Loan Guarantee Program without changes to the proposal as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3499).

The amendment is adopted to correct information regarding where copies of the Authority's credit policy may be obtained. The amendment provides that copies of the credit policy may be obtained from the Authority.

No comments were received on the proposal.

The amendment to §30.12 is adopted under the Texas Agriculture Code, §58.022, which provides the Authority's Board with the authority to adopt rules and procedures necessary for the administration of its programs, including the Young Farmer Loan Guarantee Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 8, 2005.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075



TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER A. RACETRACK LICENSES

16 TAC §309.8

The Texas Racing Commission adopts an amendment to §309.8, relating to the license fees charged to pari-mutuel racetracks. The amendment is adopted without changes to the proposed text published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4294) and the text will not be republished.

The amendment is adopted so that the Commission can fully comply with applicable law by raising sufficient revenue to fund regulatory operations.

The amendment raises the daily licensing fee for simulcasting for all pari-mutuel racetracks and raises the annual fee for licensed but inactive Class 2 racetrack licenses.

No comments were received regarding the adoption of this amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §5.01, which authorizes the Commission to prescribe reasonable license fees for each category of license; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; and §6.18, which authorizes the Commission to prescribe a reasonable annual fee to be paid by each racetrack licensee.

The amendment implements Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 7, 2005.

TRD-200503940

Elizabeth Garza Goins

General Counsel

Texas Racing Commission

Effective date: September 27, 2005

Proposal publication date: July 29, 2005

For further information, please call: (512) 833-6699



SUBCHAPTER B. OPERATIONS OF RACETRACKS

DIVISION 2. FACILITIES AND EQUIPMENT

16 TAC §309.120

The Texas Racing Commission adopts an amendment to §309.120, relating to parking areas at pari-mutuel racetracks. The amendment is adopted without changes to the proposed text published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4294) and the text will not be republished.

The amendment is adopted to ensure that the Commission's rules are consistent with state law relating to the possession of weapons in public places.

The amendment clarifies the requirements for parking for occupational licensees at the racetracks.

No comments were received regarding the adoption of this amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks.

The amendment implements Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 7, 2005.

TRD-200503941

Elizabeth Garza Goins

General Counsel

Texas Racing Commission

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Proposal publication date: July 29, 2005

For further information, please call: (512) 833-6699



DIVISION 3. OPERATIONS

16 TAC §309.164

The Texas Racing Commission adopts an amendment to §309.164, relating to accounting practices at pari-mutuel racetracks. The amendment is adopted without changes to the proposed text published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4295) and the text will not be republished.

The amendment is adopted to provide consistency with pari-mutuel racetrack accounting systems.

The amendment eliminates specific requirements for the accounting systems at pari-mutuel racetracks that are inconsistent with the types of systems commonly used by the racetracks.

No comments were received regarding the adoption of this amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks.

The amendment implements Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200503942

Elizabeth Garza Goins

General Counsel

Texas Racing Commission

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Proposal publication date: July 29, 2005

For further information, please call: (512) 833-6699



CHAPTER 311. OTHER LICENSES

SUBCHAPTER C. RESPONSIBILITIES OF INDIVIDUALS

16 TAC §311.211

The Texas Racing Commission adopts an amendment to §311.211, relating to possession of weapons at pari-mutuel racetracks. The amendment is adopted without changes to the proposed text published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4295) and the text will not be republished.

The amendment is adopted to ensure that the Commission's rules are consistent with state law relating to the possession of weapons in public places.

The amendment clarifies where on racetrack grounds the possession of a weapon is prohibited.

No comments were received regarding the adoption of this amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating

to the planning, construction, and operation of racetracks; and Texas Penal Code §46.03.

The amendment implements Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200503943

Elizabeth Garza Goins

General Counsel

Texas Racing Commission

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Proposal publication date: July 29, 2005

For further information, please call: (512) 833-6699



CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

SUBCHAPTER E. TRAINING FACILITIES

16 TAC §313.501

The Texas Racing Commission adopts an amendment to §313.501, relating to licenses for training facilities. The amendment is adopted without changes to the proposed text published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4296) and the text will not be republished.

The amendment is adopted so that the Commission can fully comply with applicable law by raising sufficient revenue to fund regulatory operations.

The amendment raises the annual licensing fee for training facilities that are authorized to provide official workouts for horses desiring to compete at pari-mutuel racetracks.

No comments were received regarding the adoption of this amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §3.021, which authorizes the Commission to charge an annual fee for licensing and regulating a training facility; §5.01, which authorizes the Commission to prescribe reasonable license fees for each category of license; and §7.05, which authorizes the Commission to adopt a fee schedule for licenses other than racetrack licenses that are issued by the Commission.

The amendment implements Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 7, 2005.

TRD-200503944

Elizabeth Garza Goins

General Counsel

Texas Racing Commission

Effective date: September 27, 2005

Proposal publication date: July 29, 2005

For further information, please call: (512) 833-6699



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.24

The Texas Appraiser Licensing and Certification Board adopts new §153.24, concerning Processing a Complaint, without changes to the proposed text as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3807) and will not be republished.

The adopted new section authorizes the Commissioner to dismiss a complaint received by the Texas Appraiser Licensing and Certification Board that is not within the Board's jurisdiction or a complaint without merit without having to wait for a Board or Enforcement meeting to close out a complaint. The new rule also streamlines the complaint process by reducing the number of days it takes to close a complaint.

No written comments were received regarding adoption of the new section.

The new section is adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 9, 2005.

TRD-200503988

Wayne Thorburn

Commissioner

Texas Appraiser Licensing and Certification Board

Effective date: September 29, 2005

Proposal publication date: July 1, 2005

For further information, please call: (512) 465-3950



PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.6

The Texas State Board of Plumbing Examiners adopts amendments to §361.6, which specifies certain fees charged by the Board, including the fees for initial applications for licenses, endorsements, and registrations, as well as examination, renewal and late renewal fees. The amendments are adopted without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4297).

The amendments are necessary in order for the Board to utilize revenue, as provided in Article VIII of the General Appropriations Act (Senate Bill 1, 79th Legislature, Regular Session), which is contingent upon the Board assessing fees sufficient to generate, during the 2006 - 2007 biennium, \$219,690 in excess of \$5,163,000 for fiscal years 2006 and 2007. The contingent revenue relates to items included in the Board's Legislative Appropriation Request for FY 2006 - 2007. Under the current fee structure, the Board will not generate enough revenue during the 2006 - 2007 biennium to meet the amount necessary for the Board to access the contingent revenue.

On February 11, 2005, following the submission of the Board's Legislative Appropriation Request for FY 2006 - 2007 (LAR), the Board received written comments from five industry associations supporting the Board's increase in license related fees, if necessary for the Board to receive funding requested in the Board's LAR. The five associations that provided the letters of support are the Associated Plumbing-Heating-Cooling Contractors Association of Texas; Texas Plumbing, Air Conditioning and Mechanical Contractors Association; Mechanical Contractors Association of Texas; Texas-Oklahoma Pipe Trades Association; and United Association of Plumbers Local Union No. 68.

On June 14, 2005, the Board began requesting comments from plumbing related associations regarding five different scenarios (numbered "One" through "Five") for license related fee increases. Any one of the scenarios would provide the necessary revenue, as described in the "Reasoned Justification" paragraph of this preamble. The Board received written comments from Texas Plumbing, Air Conditioning and Mechanical Contractors Association and William P. Jones, Manager of Raven Mechanical, both in support of fee increases only for the Master Plumber category of licenses and registrations. The Responsible Plumbers Association submitted written comments supporting fee increases for only the Master Plumber and Plumbing Inspector categories of licenses and registrations.

During its meeting on July 11, 2005, the Board invited further comments from the public in attendance regarding the five scenarios for fee increases, prior to proposing rule amendments. Verbal comments were received during the meeting from representatives of the Texas State Association of Plumbing Inspectors; Responsible Plumbers Association; and Associated Plumbing-Heating-Cooling Contractors Association of Texas. All of the verbal comments received supported Scenario Three, which detailed the fee increases only for the Master Plumber category of licenses and registrations. No one in attendance at the meeting commented in opposition of Scenario Three, raising fees for only the Master Plumbers.

The Board agreed with the comments supporting raising fees for only Master Plumbers, because fee increases applied to

Journeyman Plumbers, Tradesman Plumber-Limited Licensees or Plumber's Apprentices could possibly discourage individuals from entering into the plumbing industry. Accordingly, the Board unanimously voted to propose the rule amendments.

The Board has received no additional comments since the proposed rule amendments were published in the *Texas Register*.

The amendments are adopted under and affect Title 8, Chapter 1301, Occupations Code, ("Plumbing License Law" or "Act"), §§1301.251, 1301.253, 1301.403, the rule it amends and the General Appropriation Acts, Article VIII, Board of Plumbing Examiners (Senate Bill 1, 79th Legislature, Regular Session). Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.253 requires the Board to set fee amounts that are reasonable and necessary to cover the costs of administering the Act. Section 1301.403 sets forth the requirements for renewal of a license. The General Appropriations Act, Article VIII, Board of Plumbing Examiners (Senate Bill 1, 79th Legislature, Regular Session), provides additional funding to the Board contingent upon the Board assessing fees sufficient to generate, during the 2006 - 2007 biennium, \$219,690 in excess of \$5,163,000 for fiscal years 2006 and 2007.

No other statute, article or code is affected by these amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200504005

Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

Effective date: October 2, 2005

Proposal publication date: July 29, 2005

For further information, please call: (512) 936-5224

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER O. ADVISORY COMMITTEES

The Texas Parks and Wildlife Commission adopts new §§51.601, 51.606 - 51.611, 51.621 - 51.624, 51.631, 51.632, 51.641 - 51.643, 51.651, 51.652, 51.661, 51.662, and 51.671 - 51.674, concerning advisory committees. Sections 51.601, 51.606 - 51.611, 51.621 - 51.624, 51.631, 51.632, 51.641, 51.643, 51.652, 51.661, 51.662, and 51.671 - 51.674 are adopted with changes to the proposed text as published in the July 22, 2005, issue of the *Texas Register* (30 TexReg 4179). Sections 51.642 and 51.651 are adopted without changes and will not be republished.

The change to §51.601 corrects nonsubstantive grammatical errors in subsections (i) and (j) and replaces the term 'section' with the term 'subchapter' in subsection (l) for the sake of accuracy.

The change to §§51.606 - 51.611, 51.621 - 51.624, 51.631, 51.641, 51.643, 51.652, 51.661, 51.662, and 51.671 - 51.674 removes provisions establishing the size of each committee. Government Code, §2110.002, mandates a maximum of 24 members for each advisory committee (except as otherwise allowed by statute). Therefore, rather than specifying the number of members of each advisory committee, each advisory committee will have a maximum of 24 members. However, the Chairman of the Texas Parks and Wildlife Commission may elect to appoint fewer than 24 members to advisory committee. The membership of the San Jacinto Historical Advisory Board and the Operation Game Thief Committee are dictated by statute, therefore, the membership limit for those committees will not change.

The new sections are necessary to implement the requirements of Government Code, Chapter 2110, and Parks and Wildlife Code, §11.0162. The Texas Parks and Wildlife Code authorizes the Chairman of the Texas Parks and Wildlife Commission (the commission) to appoint advisory committees and to "adopt rules that set the membership, terms of service, qualifications, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this section." Tex. Parks & Wild. Code §11.0162. An advisory committee is a committee, council, commission, board, or task force or other entity with multiple members that has as its primary function advising a state agency in the executive branch of state government. Tex. Gov't Code §2110.001.

For a number of years, the department has sought advice from interested persons and groups about the functions of the departments. Such input is important as the commission and the department carry out the agency's mission. The formation of advisory committees is an efficient and effective method of obtaining necessary and useful input. The rules are intended to ensure compliance with Government Code, Chapter 2110, and to formalize the structure of department advisory groups. The department does not reimburse advisory committee members for their expenses or otherwise compensate advisory committee members.

There are two types of advisory committees used by the department: those advisory committees that advise the chairman and Texas Parks and Wildlife Commission (commission) on matters of interest, and those advisory committees that advise the department on a day-to-day basis. New §§51.601, 51.612 - 51.617, 51.621 - 51.625, 51.631, 51.632, 51.641 - 51.643, 51.651, 51.652, and 51.661 are rules governing the committees advising the department, and new §§51.671 - 51.674 are rules governing the committees advising the chairman and the commission.

Under Government Code, Chapter 2110, unless otherwise provided by specific statute, for each official advisory committee, a state agency must adopt rules that (1) state the purpose of the committee; (2) describe the manner in which the committee will report to the agency; and (3) establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute. Tex. Gov't Code §§2110.005, 2110.008. Government Code, Chapter 2110, also requires that the state agency advised by the advisory committee annually evaluate each advisory committee's work, usefulness and costs related to the committee's existence,

including the cost of agency staff time spent in support of the committee's activities. Tex. Gov't Code §2110.006.

The membership of a state agency advisory committee is also addressed by the Government Code. An advisory committee must be composed of a reasonable number of members, not to exceed 24. Unless otherwise provided by specific statute, the composition of the advisory committee must provide a balanced representation between: (1) industries or occupations regulated or directly affected by the state agency and; (2) consumers of services provided by the state agency or by the industries or occupations regulated by the state agency. Tex. Gov't Code §2110.002.

Unless otherwise provided by statute, an advisory committee will continue its existence after the date established for the committee's abolishment only through amendment to the agency's rules regarding the advisory committee. If a date for abolishment is not set by rule or by statute, the advisory committee will be abolished on the fourth anniversary of the date of its creation, or September 1, 2005. Tex. Gov't Code §2110.008. An advisory committee that state or federal law has specifically created is considered to have been created on the effective date of that law unless the law specifically provides for a different date of creation. Tex. Gov't Code §2110.007.

Effective September 1, 2005, all department advisory groups appointed by the chairman of the commission (the chairman) will be abolished. Likewise, the terms of all current advisory group or task force members appointed by the chairman will expire on September 1, 2005. As of the effective date of the new rules, the chairman may appoint members to the advisory committees established by these rules.

Because the San Jacinto Advisory Board and the Operation Game Thief Committee are established by statute and members are appointed by the governor and the executive director, respectively, these committees and their members' terms will not expire on September 1, 2005. Similarly, the Statewide Trails Advisory Committee and the Game Warden Academy Advisory Committee are also established by statute, although the members of these two committees are appointed by the chairman. Therefore, the Statewide Trails Advisory Committee and the Game Warden Academy Advisory Committee will not expire on September 1, 2005, but the terms of their members will expire September 1, 2005. The San Jacinto Advisory Board, the Operation Game Thief Committee, the Statewide Trails Advisory Committee and the Game Warden Academy Advisory Committee are all addressed in the rules.

New §51.601, concerning General Requirements, establishes the general requirements for department advisory committees. Unless otherwise provided, the general requirements apply to all department advisory committees established by rule. In addition, the rules provide specific requirements for each department advisory committee, including membership, terms and other requirements.

The San Jacinto Advisory Board, the Texas Statewide Trails Advisory Committee, the Game Warden Advisory Committee and the Operation Game Thief Advisory Committee are required by statute. The new rules regarding these statutorily mandated advisory committees are intended to merely track the requirements of the statutes establishing or requiring those committees.

The new rules establish six advisory committees involving wildlife issues. The White-tailed Deer Advisory Committee, as addressed in new §51.606, will advise the department on

issues relevant to white-tailed deer and all programs involving white-tailed deer management in Texas. The Game Bird Advisory Board, as addressed in new §51.607, will advise the department regarding the management, research, and habitat acquisition needs of game birds and migratory game birds, the development and implementation of game bird and migratory game bird regulations, research, and management, and education and communications with various constituent groups and individuals interested in game birds and migratory game birds. The Texas Quail Council, as addressed in new §51.608, will advise the department on matters pertaining to the implementation of the Texas Quail Conservation Initiative, including recommendations on matters pertaining to the regulation, management, research, and funding needs with respect to the four species of quail that occur in Texas. The Private Lands Advisory Board, as addressed in new §51.609, will advise the department on matters pertaining to wildlife programs, management, and research on private lands in Texas. The Bighorn Sheep Advisory Committee, as addressed in new §51.610, will advise the department on problems, alternatives, solutions and goals regarding the restoration of desert bighorn sheep to Texas. The Wildlife Diversity Advisory Committee, as addressed in new §51.611, will advise the department on management, research and outreach activities related to nongame and rare species in the State of Texas.

The new rules establish five advisory committees involving coastal fisheries issues. The Artificial Reef Advisory Committee, as described in new §51.621, will advise the department regarding the Artificial Reef Program. The Blue Crab Advisory Committee, as addressed in new §51.622, will advise the department regarding the preparation and formulation of rules and regulations necessary to carry out the department's Blue Crab Management Plan. The Oyster Advisory Committee, as addressed in new §51.623, will advise the department regarding preparation and formulation of rules and regulations necessary to carry out the department's Oyster Management Plan. The Shrimp Advisory Committee, as addressed in new §51.624, will advise the department regarding preparation and formulation of rules and regulations necessary to carry out the department's Shrimp Management Plan.

The new rules establish two advisory committees involving freshwater fisheries issues. The Freshwater Fisheries Advisory Board, as addressed in new §51.631, will advise the department regarding all matters pertaining to freshwater fisheries management and research in the State of Texas. The Texas Rivers Conservation Advisory Committee, as addressed in new §51.632, will advise the department regarding the needs of natural riverine resources while providing abundant recreational opportunities for the public.

The new rules establish three advisory committees involving state parks issues, two of which are statutorily required. The Texas Statewide Trails Advisory Board, as addressed in new §51.641, in compliance with United States Code, Title 23, §206, will advise the department regarding distribution of federal National Recreational Trail Funds to state and local sponsors of trail projects and will assist in the development of educational materials to inform the public about trail opportunities. The San Jacinto Historical Advisory Board, as addressed in new §51.642, pursuant to Texas Parks and Wildlife Code, Chapter 22, Subchapter B, will review the policies and operations of the San Jacinto Battleground and will advise the department on the proper historical development of the battleground. The Historic Sites Advisory Committee, as addressed in new §51.643, will

advise the department regarding issues related to the state historic sites and provide a mechanism for department staff and interested parties to exchange information and address the needs of state historic sites.

The new rules establish two advisory committees involving law enforcement issues, both of which are statutorily required. The Operation Game Thief Committee, as addressed in new §51.651 pursuant to Parks and Wildlife Code, §12.202, will administer the operation game thief funds and make reward payments and death benefit payments from that fund. The Game Warden Academy Advisory Committee, as addressed in new §51.652, pursuant to Texas Occupations Code, §1701.252, will develop a curriculum for the Game Warden Academy.

The new rules establish two advisory committees involving communications issues. An Expo Advisory Committee, as addressed in new §51.661, will be appointed each year and will advise the department regarding the planning and operation of the Texas Parks and Wildlife Expo, an event to encourage and increase participation in hunting, fishing, and outdoor recreation and build awareness and support for the conservation of natural, cultural and historic resources. An Outreach, Interpretation, and Education Advisory Committee, as addressed in new §51.662, will be appointed to advise the department regarding efforts to educate and encourage Texans to experience, learn, and take an active role in conserving natural and cultural resources.

The new rules establish four advisory committees to advise the chairman and the commission on a variety of issues. A State Parks Advisory, as addressed in new §51.671, will be appointed to advise the chairman and commission regarding state parks. A Coastal Resources Advisory Committee, as addressed in new §51.672, will be appointed to advise the chairman and commission regarding issues that cross fishery and geographic boundaries on the coast of Texas. A Land Resources Advisory Committee, as addressed in new §51.673, will be appointed to advise the chairman and commission regarding land resources. An Aquatic Resources Advisory Committee, as addressed in new §51.674, will be appointed to advise the chairman and commission regarding aquatic resources.

The following groups are expressly exempt from the requirements of Government Code, Chapter 2110, and are therefore not included in these rules: the Finfish License Management Review Board, established in Parks and Wildlife Code, §47.073(f); the Shrimp License Management Review Board, established in Parks and Wildlife Code, §77.118(f); and the Crab License Management Review Board, established in Parks and Wildlife Code, §78.103(f).

The rules as adopted will function by establishing the purpose of each advisory committee created under the auspices of the department; describing the manner in which each committee will report to the department; establishing the date on which each committee will automatically be abolished, unless the advisory committee has a specific duration established by statute; providing for the composition of each committee; establishing the maximum size of each committee

The department received three comments opposing adoption of the proposed rules. Only one of the three commenters offered a specific reason for opposing adoption, but the comment addressed a real estate issue that is not germane to the substance of the rulemaking. No changes were made as a result of the comment.

The department received 15 comments supporting adoption of the proposed rules.

DIVISION 1. GENERAL REQUIREMENTS

31 TAC §51.601

The new rules are adopted under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

§51.601. General Requirements.

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Advisory committee--a committee, council, commission, board, or task force or other entity with multiple members that has as its primary function advising the department.

(2) Chairman--the chairman of the Texas Parks and Wildlife Commission.

(3) Commission--the Texas Parks and Wildlife Commission.

(4) Department--the Texas Parks and Wildlife Department.

(5) Director--the Executive Director of the Texas Parks and Wildlife Department.

(b) Creation. The Chairman may appoint advisory committees to advise the commission on issues within the jurisdiction of the department or the commission.

(c) Function. Unless otherwise provided by law, an advisory committee will address only those matters about which advice is sought. An advisory committee will have no authority to establish agency policy.

(d) Expiration of advisory committee. Unless expressly provided in this subchapter or other law, each department advisory committee will expire on the fourth anniversary of the date of its creation. The date of creation shall be the date on which the rule establishing the advisory committee is effective.

(e) Membership. The chairman may, in his or her sole discretion, appoint individuals to serve on an advisory committee. Membership in an advisory committee will not exceed 24 (excluding ex officio members). Unless otherwise provided by specific statute, membership of each advisory committee shall be balanced to ensure representation of industries or occupations regulated or directly affected by the department and consumers of services provided by the department or by the industries or occupations regulated by the department to which the advisory committee relates. Each advisory committee shall include at least one department employee as an ex officio member. Members may be subject to removal and/or replacement at the discretion of the Chairman.

(f) Term of members. Unless expressly provided in this subchapter or other law, each member to an agency advisory committee will serve a term of four years. The terms may be staggered. Members' terms will expire at the end of four years or upon the termination of the advisory committee, whichever is earlier. Members may be reappointed. Members serve at the will of the chairman and may be removed at any time by the chairman. The terms of members appointed prior to September 1, 2005, expire on September 1, 2005.

(g) Presiding officer. The presiding officer of each advisory committee shall be selected by the members of the advisory committee from its membership. The chairman may make a recommendation to the advisory committee regarding the presiding officer.

(h) Subcommittees. The chairman may also appoint one or more subcommittees of an advisory committee, so long as the membership of the advisory committee, including any subcommittees does not exceed 24.

(i) Meetings. Each committee shall meet at least once a year, but may meet as often as necessary. The department ex officio member of each advisory committee shall work with the presiding officer to schedule advisory committee meetings and provide adequate notice to department staff and to other members.

(j) Reports. On or before October 1 of each year of its existence, each advisory committee shall submit a report to the department. Upon receipt of the report, the department shall evaluate the advisory committee's work, usefulness and costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities. Each report shall include the following:

(1) a summary or minutes of meetings conducted during the previous fiscal year (September 1-August 30);

(2) a summary of recommendations from the advisory committee; and

(3) other information determined by the advisory committee or the chairman to be appropriate and useful.

(k) Expenses. Members of each advisory committee will serve without compensation or reimbursement for travel or other out-of-pocket expenses.

(l) Rules. For each advisory committee appointed, the commission shall adopt rules that address the purpose of the advisory committee and membership qualifications. Such rules may also address the terms of service, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this subchapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



DIVISION 2. WILDLIFE

31 TAC §§51.606 - 51.611

The new rules are adopted under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

§51.606. White-tailed Deer Advisory Committee (WTDAC).

(a) The WTDAC is created to advise the department on issues relevant to white-tailed deer and all programs involving white-tailed deer management in Texas, including problems, options, goals and planning regarding white-tailed deer.

(b) The WTDAC membership shall represent, at a minimum:

- (1) the ecological range of white-tailed deer in Texas;
- (2) landowners;
- (3) conservation and management organizations; and
- (4) hunters.

(c) The WTDAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.607. Game Bird Advisory Board (GBAB).

(a) The GBAB is created to advise the department regarding the following :

- (1) the management, research and habitat acquisition needs of game birds and migratory game birds.
- (2) development and implementation of game bird and migratory game bird regulations, research, and management.
- (3) education and communications with various constituent groups and individuals interested in game birds and migratory game birds.

(b) The GBAB consists of members selected from members of the general public with an interest in game bird and migratory game bird management.

(c) The GBAB shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.608. Texas Quail Council (TQC).

(a) The TQC is created to advise the department on matters pertaining to the implementation of the Texas Quail Conservation Initiative, including the following:

- (1) regulation, management, research, and funding needs regarding the four species of quail that occur in Texas and
- (2) management, research and habitat acquisition needs of game birds and migratory game birds.
- (3) education and communications with various constituent groups and individuals interested in the quail species of Texas.

(b) The composition of the Texas Quail Council shall represent:

- (1) the ecological range of quail species in Texas;
- (2) landowners;
- (3) conservation organizations;
- (4) representatives of appropriate state and federal agencies; and
- (5) quail hunters.

(c) The TQC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.609. Private Lands Advisory Board (PLAB).

(a) The PLAB is created to advise the department on all matters pertaining to wildlife programs, management, and research on private lands in Texas, including the following:

- (1) the development of an ecosystem approach to management of habitats;
- (2) financing options for private lands programs;
- (3) development and dissemination of information regarding management and research of wildlife habitat and ecosystems; and

- (4) any other matters at the request of the chairman.

(b) The PLAB shall be composed of not fewer than 5 members representing private landowners from the various ecological regions of the state.

(c) The PLAB shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.610. Bighorn Sheep Advisory Committee (BSAC).

(a) The BSAC is created to advise the department about problems, alternatives, solutions, and goals regarding the restoration of desert bighorn sheep to Texas.

(b) The composition of the BSAC will be comprised of the following:

- (1) at least two members of the Texas Bighorn Society;
- (2) at least two persons who own land in the historic range of desert bighorn sheep;
- (3) university faculty and staff as necessary and appropriate; and
- (4) representatives of government agencies as necessary and appropriate.

(c) The BSAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.611. Wildlife Diversity Advisory Committee (WDAC).

(a) The WDAC shall advise the department on matters pertaining to management, research, and outreach activities related to nongame and rare species in the State of Texas, including the following:

- (1) development and implementation of the wildlife diversity related projects, grants, and policy;
- (2) wildlife diversity conservation and regulations;
- (3) education and communications with various constituent groups and individuals interested in wildlife diversity in the state of Texas.

(b) The composition of the WDAC shall represent landowner and conservation organizations in Texas.

(c) The WDAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene McCarty

Chief of Staff

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DIVISION 3. COASTAL FISHERIES

31 TAC §§51.621 - 51.624

The new rules are adopted under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

§51.621. Artificial Reef Advisory Committee (ARAC).

(a) The ARAC is created to advise the department regarding the ongoing Artificial Reef Program.

(b) The ARAC shall consist of members of the public who have an interest in the artificial reef program.

(c) The ARAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.622. Blue Crab Advisory Committee (BCAC).

(a) The BCAC is created to advise the department regarding the preparation and formulation of rules and regulations necessary to carry out the Blue Crab Management Plan.

(b) The BCAC shall consist of members of the public who have an interest in the blue crab management program.

(c) The BCAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.623. Oyster Advisory Committee (OAC).

(a) The OAC is created to advise the department regarding the preparation and formulation of rules and regulations necessary to carry out the Oyster Management Plan.

(b) The OAC shall consist of members of the public who have an interest in the oyster program.

(c) The OAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.624. Shrimp Advisory Committee (SAC).

(a) The SAC is created to advise the department regarding the preparation and formulation of rules and regulations necessary to carry out the Shrimp Management Plan.

(b) The SAC shall consist of members of the public who have an interest in shrimp issues.

(c) The SAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 4. INLAND FISHERIES

31 TAC §51.631, §51.632

The new rules are adopted under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

§51.631. Freshwater Fisheries Advisory Board (FFAB).

(a) The FFAB is created for the purpose of advising the department regarding all matters pertaining to freshwater fisheries management and research in the state. The Board shall also advise the department regarding the following:

(1) the development and implementation of freshwater fisheries management programs throughout the state;

(2) the development of management and research priorities;

(3) the development of priorities for expenditures of angler financed programs; and

(4) the dissemination of information regarding freshwater fisheries management and research.

(b) The FFAB shall consist of individuals representing the state's freshwater angling public, the aquaculture industry, the freshwater fishing industry, fisheries educators, and conservation groups. Each member shall serve two-year or four-year terms as designated by the chairman, and terms may be staggered to ensure continuity.

(c) The FFAB shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.632. Texas Rivers Conservation Advisory Board (TRCAB).

(a) The TRCAB is created to advise the department regarding the needs of natural riverine resources while providing abundant recreational opportunities for the public. The advisory committee's responsibilities include the following:

(1) serving as a sounding group for the public's interest;

(2) assisting department staff in evaluating aquatic conservation program strengths, weaknesses, and needs; and

(3) providing advice and guidance to the department concerning program goals and objectives.

(b) The TRCAB shall consist of the following:

(1) private landowner representatives;

(2) natural resource conservation organizations;

(3) recreation representatives;

(4) retail business; and

(5) state/federal agency representatives.

(c) The TRCAB shall comply with the requirements of §51.601 of this title (relating to General Requirements).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 5. STATE PARKS

31 TAC §§51.641 - 51.643

The new rules are adopted under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

§51.641. *Texas Statewide Trails Advisory Board (TSTAB).*

(a) The TSTAB is created in compliance with United States Code, Title 23, §206, to advise the department regarding the distribution of federal National Recreational Trail Funds to state and local sponsors of trail projects and to assist in the development of educational materials to inform the public about trail opportunities.

(b) The TSTAB shall consist of individuals representing a diverse range of trail-related interests, which may include pedestrian activities, including wheelchair use; skating or skateboarding; equestrian activities, including carriage driving; nonmotorized snow-trail activities; bicycling or use of other human-powered vehicles; aquatic or water activities; and motorized vehicular activities, including all-terrain vehicle riding, motorcycling, snowmobiling, use of off-road light trucks, or use of other off-road motorized vehicles.

(c) So long as the department receives federal National Recreational Trail Funds, the TSTAB shall continue unless otherwise abolished by statute.

(d) Unless otherwise required by law, the TSTAB shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.643. *Historic Sites Advisory Committee (HSAC).*

(a) The HSAC is created to advise the department regarding the issues related to state historic sites and the needs of the state historic sites.

(b) The HSAC shall consist of professionals in the following fields: historic sites education, museums management, historic architecture, history, archeology, and related disciplines.

(c) The HSAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 6. LAW ENFORCEMENT

31 TAC §§51.651, §51.652

The new rules are adopted under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

§51.652. *Game Warden Academy Advisory Committee (GWAAC).*

(a) The GWAAC is created pursuant to Occupations Code, §1701.252 for the purpose of developing a curriculum for the Game Warden Academy.

(b) At least one third of the members of the Game Warden Academy Advisory Committee shall be public members that meet the qualifications required of a public member of the Texas Commission on Law Enforcement Office Standards and Education under Occupations Code, §1701.052.

(c) The GWAAC shall continue until abolished by statute.

(d) Unless otherwise provided by this section or by Occupations Code, §1701.252, or the rules of Texas Commission on Law Enforcement Office Standards and Education, including 37 TAC §215.7, the GWAAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 7. COMMUNICATIONS

31 TAC §§51.661, §51.662

The new rules are adopted under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

§51.661. *Expo Advisory Committee (EAC).*

(a) The EAC shall be appointed each year to advise the department regarding the planning and operation of the Texas Parks and Wildlife Expo, an event to encourage and increase participation in hunting, fishing and outdoor recreation and build awareness and support for the conservation of natural, cultural and historic resources.

(b) The EAC shall consist of representatives from the sporting goods industry, organized youth groups, marketing organizations, and conservation organizations. Each member shall serve until November 30th of the calendar year in which the member is appointed.

(c) The EAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.662. *Outreach, Interpretation, and Education Advisory Committee (OIEAC).*

(a) The OIEAC is appointed to advise the department regarding efforts to educate and encourage Texans to experience, learn, and take an active role in conserving Texas' natural and cultural resources.

(b) The OIEAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

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DIVISION 8. COMMITTEES OF THE COMMISSION

31 TAC §§51.671 - 51.674

The new rules are adopted under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

§51.671. *State Parks Advisory Committee (SPAC).*

(a) The SPAC is appointed to advise the chairman and the commission regarding state parks.

(b) The SPAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.672. *Coastal Resources Advisory Committee (CRAC)*

(a) The CRAC is created to advise the chairman and the commission on issues that cross fishery and geographic boundaries on the coast of Texas.

(b) The CRAC shall consist of members in the public who have an interest in coastal resources issues.

(c) The CRAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.673. *Land Resources Advisory Committee (LRAC).*

(a) The LRAC is appointed to advise the chairman and the commission on issues affecting land resources.

(b) The LRAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.674. *Aquatic Resources Advisory Committee (ARAC).*

(a) The ARAC is appointed to advise the chairman and the commission regarding aquatic resources.

(b) The ARAC shall comply with the requirements of §51.601 of this title (relating to General Requirements).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200503963

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775

TITLE 34. PUBLIC FINANCE

PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

CHAPTER 301. RULES OF THE TEXAS STATEWIDE EMERGENCY SERVICES RETIREMENT FUND

34 TAC §§301.1 - 301.12

The Texas Emergency Services Retirement System State Board of Trustees adopts the repeal of 34 Texas Administrative Code Chapter 301, §§301.1 - 301.12, concerning the Rules of the Texas Statewide Emergency Services Retirement Fund. The repeal is adopted without changes to the proposal as published in the July 29, 2005, issue of *Texas Register* (30 TexReg 4309).

The Board is repealing §§301.1 - 301.12 because the rules became obsolete with the enactment of 79R-SB 522 (Government Code, Subtitle H, Texas Emergency Services Retirement System).

No comments were received regarding the proposed repeal.

The Board adopts the repeal of §§301.1 - 301.12 under the authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, which provides the State Board of Trustees with the authority to promulgate rules necessary for the administration of the pension fund.

No other statutes, articles, or codes are affected by the adopted repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200504006

Kevin Deiters

Program Director

Office of the Fire Fighters' Pension Commissioner

Effective date: October 2, 2005

Proposal publication date: July 29, 2005

For further information, please call: (512) 936-3472

CHAPTER 302. GENERAL PROVISIONS RELATING TO THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §§302.1 - 302.5

The Texas Emergency Services Retirement System State Board of Trustees adopts new 34 Texas Administrative Code Chapter 302, §§302.1 - 302.5, concerning the general provisions relating to the Texas Emergency Services Retirement System. The Board adopts §§302.1 - 302.5 without changes to the proposed text as published in the July 29, 2005, issue of *Texas Register* (30 TexReg 4309).

Sections 302.1 - 302.5 will provide the Board and the Office of the Fire Fighters' Pension Commissioner with the authority needed to administer the System. The System provides pension, disability, and death benefits for volunteer fire fighters and EMS personnel in departments that participate in the System. The proposed new rules identify definitions and provide the Board with the authority to make changes needed to comply with Internal Revenue System regulations. The rules will also allow individuals to reduce or revoke benefits provided by the System.

There were no comments received regarding the proposed new rules.

The new rules are adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System that was created with the enactment of 79R-SB 522.

No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 12, 2005.

TRD-200504007

Kevin Deiters

Program Director

Office of the Fire Fighters' Pension Commissioner

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Proposal publication date: July 29, 2005

For further information, please call: (512) 936-3472



CHAPTER 304. MEMBERSHIP IN THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §304.1, §304.2

The Texas Emergency Services Retirement System State Board of Trustees adopts new 34 Texas Administrative Code Chapter 304, §304.1 and §304.2, governing membership in the Texas Emergency Services Retirement System. Section 304.1 is adopted with changes to the proposed text as published in the July 29, 2005, issue of *Texas Register* (30 TexReg 4310). Section 304.2 is adopted without changes to the proposed text as published.

The Board made changes to §304.1(c) to correct the citation for the purchase of prior service from §303.1 to §306.1. This correction affects no new persons, entities or subjects other than those given notice and that compliance with the adopted section will not be more burdensome than under the proposed section. Accordingly, republication of the adopted section, as proposed amendments is not required.

The new rules will provide the Board and the Office of the Fire Fighters' Pension Commissioner with the authority needed to administer the System. The System provides pension, disability, and death benefits for volunteer fire fighters and EMS personnel in departments that participate in the System. The adopted rules identify the responsibilities of departments joining the System and provide for a probationary period for individual members.

There were no comments received regarding the proposed new rules.

The new rules are adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System that was created with the enactment of 79R-SB 522.

No other statutes, articles, or codes are affected by the adoption.

§304.1. Participation by Department.

(a) The governing body of a department that performs emergency services may, in the manner provided for taking official action by the body, elect to participate in the pension system. A governing body shall notify the commissioner as soon as practicable of an election made under this section. An election made under this section is irrevocable except as provided by §862.001, Government Code.

(b) The effective date of a department's participation in the pension system must be the first day of a month but may pre-date the date of the election as determined by contract between the governing body and the pension system.

(c) A department may purchase prior service credit under §306.1 of this title under the terms of that section for service performed before the date of the election to participate in the pension system but is not liable for the payment of benefits because of any disability or death that occurred before that date.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin Deiters

Program Director

Office of the Fire Fighters' Pension Commissioner

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CHAPTER 306. CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §306.1

The Texas Emergency Services Retirement System State Board of Trustees adopts new 34 Texas Administrative Code Chapter 306, §306.1, governing creditable service for members of the Texas Emergency Services Retirement System. The new rule is adopted with changes to the proposed text as published in the July 29, 2005, issue of *Texas Register* (30 TexReg 4311).

The Board adopts §306.1 with changes to clarify that a new department may elect to purchase prior service credit at the first meeting of the local board instead of on the effective date of participation or later. Section 306.1(c) was amended by the Board to correct that the cost to purchase prior service is based "on" the actuarially assumed investment rate of investment return on fund assets at the time payment for credit begins. Changes in the adopted text reflect a non-substantive variation from the proposed section. The changes affect no new persons, entities or

subjects other than those given notice and that compliance with the adopted section will not be more burdensome than under the proposed section. Accordingly, republication of the adopted section, as proposed amendments is not required.

The adopted rule will provide the Board and the Office of the Fire Fighters' Pension Commissioner with the authority needed to administer the System. The System provides pension, disability, and death benefits for volunteer fire fighters and EMS personnel in departments that participate in the System. The adopted new rule will allow departments to purchase service credit in the System for service performed by members before entry into the System. The adopted rule sets the cost to finance the prior service at the actuarial assumed rate of investment return and limits the System provided financing to 10 years.

There were no comments received regarding the proposed new rule.

The new rule is adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System that was created with the enactment of 79R-SB 522.

No other statutes, articles, or codes are affected by the adoption.

§306.1. Prior Service Credit for Members of Participating Departments.

(a) A department that elects to participate in the pension system may, at the first meeting of the local board, elect to purchase service credit for service performed by the persons who became members on the effective date of departmental participation.

(b) The pension system shall grant prior service credit under this section if the department agrees in writing to finance the prior service credit by a lump-sum payment or within a period not to exceed 10 years from the effective date.

(c) The cost to finance the purchase of prior service credit is based on the actuarially assumed rate of investment return on fund assets at the time payment for the credit begins.

(d) The commissioner shall furnish to each participating department that agrees to purchase prior service credit a record of member prior service to be completed and returned to the commissioner showing the amount of prior service performed by each member of the department. The record must be signed by the chair and secretary of the local board and the administrative head of the department and be accompanied by a copy of the minutes of the local board showing approval of the amounts of prior service credit given the members.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin Deiters

Program Director

Office of the Fire Fighters' Pension Commissioner

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For further information, please call: (512) 936-3472

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CHAPTER 308. BENEFITS FROM THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §§308.1 - 308.4

The Texas Emergency Services Retirement System State Board of Trustees adopts new 34 Texas Administrative Code Chapter 308, §§308.1 - 308.4, governing benefits from the Texas Emergency Services Retirement System. Section 308.3 and §308.4 are adopted with changes to the proposed text as published in the July 29, 2005, issue of *Texas Register* (30 TexReg 4312). Section 308.1 and §308.2 are adopted without changes to the proposed text as published.

The Board made changes to §308.3(e) by substituting the word "termination" for the word "suspension" and by replacing the term "pending certification" with the term "if the person is not certified". The Board amended §308.4(b) to provide off-duty death benefits that are "the greater of" the amount contributed to the fund on the decedent's behalf or the sum that would have been contributed on decedent's behalf at the end of the period required for full service retirement. Changes in the adopted rules reflect a non-substantive variation from the proposed rules. The changes affect no new persons, entities or subjects other than those given notice and that compliance with the adopted sections will not be more burdensome than under the proposed sections. Accordingly, republication of the adopted sections, as proposed amendments is not required.

The new rules will provide the Board and the Office of the Fire Fighters' Pension Commissioner with the authority needed to administer the System. The new rules identifies the eligibility requirements and annuity payment amounts for pension, disability, and death benefits for volunteer fire fighters and EMS personnel in departments that participate in the System.

There were no comments received regarding the proposed new rules.

The new rules are adopted under the statutory authority of Title 8, Government Code, Subtitle H Texas Emergency Services Retirement System that was created with the enactment of 79R-SB 522.

No other statutes, articles, or codes are affected by the adoption.

§308.3. Disability Retirement Annuity.

(a) Except as otherwise provided by §864.004 and §865.006, Government Code, and this section, a member whose disability results from performing emergency service duties is entitled to a monthly annuity during the period of the disability in an amount equal to \$300 plus \$50 for every \$12 increase in contributions paid by the governing body for which the person was performing emergency services at the time of the disability.

(b) An increase in contributions by a governing body after the payment of a monthly annuity begins does not increase the amount of the annuity.

(c) Disability benefits are prorated for portions of months during which a person is disabled.

(d) A local board shall report to the commissioner, in a manner provided by the pension system, a determination of temporary disability not later than the 45th day after the date the disability begins.

(e) A person receiving temporary disability benefits who does not apply to the Social Security Administration for certification as permanently disabled before the second anniversary of the date of determination of temporary disability or, if the person does not participate in the social security program, to a medical board selected by the state board for alternative certification is subject to termination of disability benefit payments if the person is not certified by the Social Security Administration or the medical board within the period provided by §864.004, Government Code.

§308.4. *Death Benefits.*

(a) The beneficiary of a member who dies as a result of performing emergency service duties is entitled to a lump-sum benefit of \$60,000.

(b) The beneficiary of a deceased member whose death did not result from the performance of emergency service duties, including a member whose death resulted from the performance of active military duty, is entitled to the greater of:

(1) the amount contributed to the fund on the decedent's behalf; or

(2) the sum that would have been contributed on the decedent's behalf from whatever source at the end of the period required for full service retirement benefits.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200504015

Kevin Deiters

Program Director

Office of the Fire Fighters' Pension Commissioner

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For further information, please call: (512) 936-3472



CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §§310.1 - 310.9

The Texas Emergency Services Retirement System State Board of Trustees adopts new 34 Texas Administrative Code Chapter 310, §§310.1 - 310.9, governing administration of the Texas Emergency Services Retirement System. Sections 301.6 - 301.9 are adopted with changes to the proposed text as published in the July 29, 2005, issue of *Texas Register* (30 TexReg 4313). Sections 310.1 - 310.5 are adopted without changes to the proposed text as published.

Proposed §310.6(c) was not adopted by the State Board in order to allow the system's actuaries additional time to determine the actuarial impact of the proposed contribution increases. Section 310.6(d) and (e) were relettered (c) and (d) respectively. The Board amended §310.7 to authorize a municipality "or other political subdivision" to contract with the Commissioner for the administration of pensions payable under the Texas Local Fire Fighters Retirement Act. The Board adopted §310.8 after including the

cost of pensions to the list of billable items under §310.8(b)(3). The Board adopted §310.9 after removing the requirement that each report identify emergencies to which the department responded during the reporting period. These corrections affect no new persons, entities or subjects other than those given notice and that compliance with the adopted sections will not be more burdensome than under the proposed sections. Accordingly, republication of the adopted sections, as proposed amendments is not required.

The new rules will provide the Board and the Office of the Fire Fighters' Pension Commissioner with the authority needed to administer the System. The new rules identify the administrative requirements of the State Board of Trustees and the Local Board of Trustees. The new rules provide the Commissioner with the authority to request periodic reports and to access administrative penalties for the failure to file those reports in a timely manner.

There were no comments received regarding the proposed new rules.

The new rules are adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System that was created with the enactment of 79R-SB 522.

No other statutes, articles, or codes are affected by the adoption.

§310.6. *Local Contributions.*

(a) Except as otherwise provided by this section, each participating department shall contribute at least \$12 for each month or a portion of a month a member performs emergency services for the department. A participating department may elect to make contributions at a greater rate by notifying the commissioner of the rate. Contributions are payable for each month or portion of a month of service regardless of whether the member receives a year of qualified service. Contributions are payable as provided by §865.014, Government Code, and §310.8 of this title.

(b) The minimum contribution rate for a department that begins participation in the pension system after September 1, 2005, is \$36.

(c) Contributions are payable during a period of temporary disability or when leave is taken under the Family and Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.), but are not payable when a member is performing active military duty, although the member receives credit for qualified service when performing active military duty.

(d) Contributions required under this section are not considered compensation to the members for whom they are made.

§310.7. *Administration of Local Fire Fighter Pension Benefits.*

A municipality or other political subdivision may contract with the commissioner for the administration of pensions payable under the Texas Local Fire Fighters Retirement Act. A contract under this section must include an administrative fee to recover the cost of administering the benefits. Administrative fees collected under this section shall be deposited in the fund.

§310.8. *Billings.*

(a) The commissioner shall bill governing bodies of participating departments and governing bodies of municipalities for which the commissioner is administering pensions under the Texas Local Fire Fighters Retirement Act quarterly on the last business day of November, February, May, and August.

(b) Each billing shall include, as appropriate, charges for:

- (1) monthly contributions for participating members;
- (2) prior service contributions;
- (3) the cost of, and any administrative fee for administering pensions under the Texas Local Fire Fighters Retirement Act;
- (4) late-payment interest charges; and
- (5) unpaid administrative penalties.

(c) At least 30 days before the last day of each quarter, the commissioner shall send to the chair of the local board of each participating department a pension roster report that includes the name of each person who performs emergency services for the department and is identified as a member of the pension system.

(d) The chair of the local board or the administrative head of the department shall verify the accuracy of the report, make needed changes in the roster, and return the report to the commissioner not later than the fifth day before the last day of the quarter.

(e) Payments under a billing issued under this section become due within 30 days of the invoice date. Late payments accrue interest at the current actuarially assumed rate of investment return on fund assets.

§310.9. Periodic Reports; Administrative Penalties.

(a) The commissioner shall require periodic reports of local boards. The commissioner shall specify the content to ensure the ability of the state board and the commissioner to administer the pension system in a manner that uses fund assets in a manner required by statute.

(b) A report required in accordance with this section is late if it is not received by the commissioner before the end of the month following the last month required to be covered in the report.

(c) An administrative penalty is imposed on each late periodic report required in accordance with this section. The penalty is \$500 for each violation, except that a surcharge of \$100 will be added to the penalty for each month the report remains late.

(d) The commissioner may waive an administrative penalty under this section if the commissioner determines, after a written request by a local board for a waiver, that the delay in reporting was beyond the control of the entities responsible for preparing and submitting the report and was not the result of neglect, indifference, or lack of diligence.

(e) A local board may appeal the commissioner's denial of a waiver to the state board to be determined at the board's next scheduled meeting. On appeal to the state board, the board is subject to the same standard for determination as the commissioner but may in its discretion accept additional information from the local board.

(f) A determination by the state board on appeal under this section may not be appealed to a court and is not subject to any other legal process.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin Deiters
Program Director
Office of the Fire Fighters' Pension Commissioner
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For further information, please call: (512) 936-3472

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety adopts amendments to §4.1, concerning Regulations Governing Hazardous Materials, without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4314).

An amendment to §4.1(a) is necessary in order to ensure that the Federal Hazardous Material Regulations, incorporated by reference in the section, reflects all amendments and interpretations issued through July 1, 2005. A second amendment to §4.1(b)(9) is necessary in order to correct an inaccuracy listed in the current rule.

On August 16, 2005, the department held a public hearing to receive comment(s) from all interested person(s) regarding adoption of the amendments. No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.018, which authorizes the director to adopt all or part of the federal hazardous materials rules by reference; and Texas Transportation Code, §644.051, which authorizes the director to adopt all or part of the federal safety regulations by reference.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200503872
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: September 22, 2005
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For further information, please call: (512) 424-2135

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §§4.11, 4.13, 4.16

The Texas Department of Public Safety adopts amendments to §§4.11, 4.13, and 4.16, concerning Regulations Governing Transportation Safety, without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4315).

The amendment to §4.11 is necessary in order to update the rule so that it reflects July 1, 2005 in subsection (a). The amendment is necessary to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in the section, reflects all amendments and interpretations issued through that particular date.

The amendments to §4.13 are necessary in order to clarify both the initial and recertification requirements for peace officers certified under this section.

The amendments to §4.16 are necessary in order to authorize the department to accept payments of administrative penalties by electronic funds transfer or credit card, and to specify procedures and fees for accepting these payment transactions.

On August 16, 2005, the department held a public hearing to receive comment(s) from all interested person(s) regarding adoption of the amendments. No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference. The amendment to §4.16 is also adopted pursuant to Texas Government Code, §411.0135, which authorizes the department to adopt rules regulating the method of payment of fees and charges.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

The Texas Workforce Commission (Commission) adopts the repeal of Chapter 819 relating to the Texas Workforce Commission Civil Rights Division in its entirety, without changes to the proposal as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3825).

The Commission adopts new Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, with changes to the proposed text as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3825) as follows. The text will be republished.

Subchapter B, Equal Employment Opportunity Provisions, §§819.11 and §819.12

Subchapter C, Equal Employment Opportunity Reports, Training, and Reviews, §§819.22 and §819.23

Subchapter D, Equal Employment Opportunity Complaints and Appeals Process, §§819.43, 819.46, 819.48

Subchapter E, Equal Employment Opportunity Deferrals, §819.71

Subchapter F, Equal Employment Opportunity Records and Recordkeeping, §819.92

Subchapter G, Texas Fair Housing Act Provisions, §819.112

Subchapter I, Texas Fair Housing Act Complaints and Appeals Process, §§819.151, 819.153, 819.156

Subchapter K, Fair Housing Administrative Hearings and Judicial Review, §§819.199 and §819.200

The Texas Workforce Commission (Commission) adopts new Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, without changes to the proposed text as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3825) as follows. The text will not be republished.

Subchapter A, General Provisions, §§819.1 - 819.3

Subchapter B, Equal Employment Opportunity Provisions, §819.10

Subchapter C, Equal Employment Opportunity Reports, Training, and Reviews, §§819.21, 819.24 - 819.26

Subchapter D, Equal Employment Opportunity Complaints and Appeals Process, §§819.41, 819.42, 819.44, 819.45, 819.47, 819.49 - 819.52

Subchapter E, Equal Employment Opportunity Deferrals, §§819.72 - 819.76

Subchapter F, Equal Employment Opportunity Records and Recordkeeping, §§819.91 and §819.93

Subchapter G, Texas Fair Housing Act Provisions, §819.111

Subchapter H, Discriminatory Housing Practices, §§819.121 - 819.135

Subchapter I, Texas Fair Housing Act Complaints and Appeals Process, §§819.152, 819.154, 819.155

Subchapter J, Fair Housing Deferral to Municipalities, §§819.171 and §819.172

Subchapter K, Fair Housing Administrative Hearings and Judicial Review, §§819.191 - 819.198, 819.201

Subchapter L, Fair Housing Fund, §819.221

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART III. COORDINATION ACTIVITIES

PART IV. RULE REPEAL

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Purpose

The Commission adopts the repeal of Chapter 819 and adopts new Chapter 819, in part, to:

(1) align the rules with House Bill (HB) 2933, enacted by the 78th Texas Legislature, Regular Session, effective March 1, 2004, which directed the abolition of the Texas Commission on Human Rights, the creation of the Texas Workforce Commission Civil Rights Division (CRD), and the reinstitution of the Commission on Human Rights with authority different from that of the abolished Texas Commission on Human Rights; and

(2) remove duplicative and obsolete administrative processes, procedures, references, and terminology.

Other issues addressed through this adopted repeal and adopted new rules include:

(1) clarifying the procedures for processing employment and housing discrimination complaints;

(2) improving the procedures for review of state agency personnel policies and firefighter tests;

(3) distinguishing between the nature and content of standard and compliance employment discrimination training for state agency employees;

(4) defining the term "complaint with merit" for purposes of compliance employment discrimination training;

(5) providing standards for evaluating employment discrimination training programs for state agency employees, as required by statute; and

(6) clarifying Agency personnel policy as it applies to the CRD director.

The Commission adopts new Chapter 819 to retain only the provisions required by Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Labor Code, Chapter 301, Subchapter I, concerning the Civil Rights Division; Texas Property Code, Chapter 301, concerning housing discrimination; and Texas Government Code, Chapter 419, §§419.102 - 419.105, concerning firefighter test review.

Background and Authority

In 2003, the 78th Texas Legislature passed HB 2933, which abolished the Texas Commission on Human Rights, transferred the powers and duties of the abolished Texas Commission on Human Rights to the newly created CRD, and reinstituted a Commission on Human Rights with authority different from that of the abolished Texas Commission on Human Rights. Thus, following the passage of HB 2933, the Chapter 819 rules, which set forth procedures and policies of the now-abolished Texas Commission on Human Rights did not accurately reflect changes made by HB 2933. The Commission now adopts new Chapter 819 rules to incorporate the legislative direction of HB 2933, exercising the authority granted under HB 2933 §5(3) that states, "A

rule, form, order, or procedure adopted by the Commission on Human Rights is a rule, form, order, or procedure of the Texas Workforce Commission civil rights division and remains in effect until changed by Texas Workforce Commission."

The Commission reviewed Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972; Civil Rights Act of 1991; Americans with Disabilities Act of 1990, as amended; and 29 U.S.C. Chapter 14, regarding Age Discrimination in Employment, to effectuate the changes directed in HB 2933. Additionally, the Commission reviewed Texas Labor Code, Chapters 21 and 301; Texas Property Code, Chapter 301; and Texas Government Code, Chapter 419. Language that is not necessary to the understanding of the rule or duplicates language found in statute or other rules is eliminated. Therefore, the following topics are not included in the new rules:

Employment General Construction

Employment Authority

Employment Severability

Employment Availability

General Description

Term of Office

Meetings

Reimbursements

General Powers

Employee Training and Education

Historically Underutilized Business Program

Confidentiality

Temporary Injunctive Relief

Policy

Office of Alternative Dispute Resolution

Referral of Pending Complaints for Alternative Dispute Resolution

Notification and Objection

Appointment of Mediators

Standards and Duties of Mediators

Compensation of Mediators

Conduct and Decorum

Confidentiality of Communications during Alternative Dispute Resolution Procedures Conformity

Housing General Construction

Housing Authority

Housing Severability

Housing Availability

Powers of Commission

Referral Authority

Sale or Rental of a Single Family House by an Owner

Sale, Rental or Occupancy of Dwellings by a Religious Organization, Association, or Society, or a Not-for-Profit Institute

Housing Owned or Operated by a Private Club
 Local or State Restrictions on Maximum Number of Occupants of a Dwelling
 Appraisals of Real Property
 Illegal Manufacture or Distribution of a Controlled Substance
 Health or Safety of Individuals or Damage to Property
 Real Estate Practices Prohibited
 Unlawful Refusal to Sell or Rent or to Negotiate for the Sale or Rental
 Prohibited Interference, Coercion, Intimidation, or Retaliation
 Persons against Whom Complaints May Be Filed
 Cooperation with Federal Agencies
 Relief Sought for Aggrieved Persons during Conciliation
 Conciliation Provisions Relating to Public Interest
 Prohibitions and Requirements for Disclosure of Information Obtained during Conciliation
 Issuance of Charge
 Election of Civil Action or Provision of Administrative Hearing Procedure
 Administrative Penalties
 Effect of Commission Order
 Filings of Exceptions and Replies
 Form of Exceptions and Replies
 Emergency Orders
 Show Cause Orders and Complaints
 Temporary and Preliminary Relief
 Enforcement by Attorney General
 Subpoena Enforcement Power
 Civil Action
 Court Appointed Attorney
 Relief Granted
 Effect of Relief Granted
 Intervention by Attorney General
 Licensed or Regulated Businesses
 Order in Preceding Five Years
 Prevailing Party
 Statutory Authority
 Effective Date

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor nonsubstantive editorial changes are made throughout Chapter 819 that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions with Comments and Responses.)

General Comments on Chapter 819

Comment: One commenter stated that the repeal of Chapter 819 will facilitate the activities and responsibilities of the Commission on Human Rights and CRD.

Response: The Commission appreciates the commenter's support for the new rules and notes that the repeal and revision of these rules is necessitated by the passage of HB 2933.

Comment: One commenter expressed concern that many individuals are not familiar with the state's procedures for filing discrimination complaints and they should be provided with a telephone number or Internet site offering simple instructions.

Response: In an effort to improve public access to information regarding employment and housing discrimination, CRD operates a toll-free phone line. Furthermore, CRD distributes outreach materials, including pamphlets and videos, that describe discriminatory practices prohibited by law. CRD also posts instructions for filing a complaint in English and Spanish on its Web site. The Commission believes that any additional proposals for enhancing public awareness in this area should be implemented as a policy of the Commission on Human Rights and not in rule.

Comment: One commenter noted that the clarifications regarding the types of employment and housing discrimination practices, as well as procedures to review firefighter tests, are appropriate and appear to cover all possible scenarios.

Response: The Commission agrees with the commenter's assessment, particularly because increased clarity is one of the guiding objectives of new Chapter 819.

Specific Comments Regarding Individual Sections of Chapter 819

SUBCHAPTER A. GENERAL PROVISIONS

§819.1. Purpose

The Commission adopts new §819.1 to implement the following statutory provisions: Texas Labor Code, Chapter 21 (relating to Employment Discrimination) and Chapter 301, Subchapter I (relating to Civil Rights Division); Texas Property Code, Chapter 301, (relating to Texas Fair Housing Act); and Texas Government Code, Chapter 419, Subchapter F (relating to Review of Fire Department Tests).

§819.2. Definitions

The Commission adopts new §819.2 to clarify terminology used in both the employment and housing portions of the rules. The changes better align with the terminology and direction of HB 2933. The rules also include definitions that are applicable only to employment discrimination in §819.11 and to housing discrimination in §819.112. Furthermore, the following definitions found in current rule are not included in the new Chapter 819 because they are defined in the Texas Labor Code: act, age, alternative dispute resolution, chairman, commission, commissioner, court, deferral or referral, demonstrates, designee, employee, employment agency, executive director, federal government, Government Code, labor organization, local ordinance, national origin, political subdivision, religion, and sex.

Comment: One commenter recommended that the term Agency be defined.

Response: As noted in this section, the terms defined in §819.2 are "in addition to the definitions contained in §800.2 of this title" (Title 40, Part 20 of the Texas Administrative Code), which includes Chapter 819. Section 800.2 states that words and terms relating to the Texas Workforce Commission, when used in Part

20, will have certain meanings, unless the context clearly indicates otherwise. The term Agency is defined in §800.2 as the Texas Workforce Commission; therefore, the Commission believes that it is unnecessary to redefine it in this chapter.

§819.3. Roles and Responsibilities of Commission on Human Rights, CRD, and CRD Director

The Commission adopts new §819.3 to delineate the responsibilities of the new Commission on Human Rights and the newly created CRD, and to clarify the relationship between the CRD director, the Commission on Human Rights, and the Agency.

Comment: One commenter questioned the extent of the Texas Workforce Commission's supervision of the activities of the Commission on Human Rights and CRD, and in particular, whether the Commission on Human Rights must seek approval of its decisions from the Texas Workforce Commission.

Response: The Commission clarifies the statutory division of responsibility among those entities involved with the rule as follows:

- The Commission is responsible for rulemaking regarding CRD. The Commission's authority does not include approval of decisions issued by the Commission on Human Rights.

- The Commission on Human Rights determines policy for CRD operations.

- The CRD director implements the policy set by the Commission on Human Rights.

Regarding authority over the CRD director, the Commission further clarifies that the CRD director is both an appointee of the Commission on Human Rights, as well as an employee of the Agency. Consequently, the Commission on Human Rights has the authority to hire, supervise and fire the director, while the Agency executive director has the authority to take all personnel action pursuant to the Agency's personnel policy, excluding termination, after consultation with the chair of the Commission on Human Rights.

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

§819.10. Purpose

The Commission adopts new §819.10, which provides that the purpose of Subchapters B - F is to set forth procedures for CRD to execute its responsibilities in the administration and enforcement of Texas Labor Code, Chapter 21.

§819.11. Definitions

The Commission adopts new §819.11 to provide definitions that pertain exclusively to employment issues addressed in Subchapter B, Equal Employment Opportunity Provisions; Subchapter C, Equal Employment Opportunity Reports, Training, and Reviews; Subchapter D, Equal Employment Opportunity Complaints and Appeals Process; Subchapter E, Equal Employment Opportunity Deferrals; and Subchapter F, Equal Employment Opportunity Records and Recordkeeping. The terms defined include bona fide occupational qualification, Civil Rights Act, complaint, conciliation, disability, employer, local commission, mediation, and perfected complaint. In particular, the terms complaint and perfected complaint are defined to distinguish between a complaint that is filed with CRD, and a perfected complaint that triggers an investigation by CRD. In addition, the terms mediation and conciliation are defined to distinguish between efforts by a complainant and respondent to resolve the perfected complaint. Mediation is offered during an investigation prior to a determination

of cause, while conciliation is used after a determination of cause is rendered.

Comment: One commenter asked whether the reference to employees in the definition of employer means full-time or part-time employees.

Response: The definition of employer mirrors that found in Texas Labor Code, Chapter 21, that is modeled after Title VII of the Civil Rights Act of 1964. EEOC and CRD include any employee, whether full-time or part-time, in its interpretation of those employers subject to the law.

Comment: Also regarding the definition of employer, another commenter questioned whether an employer is also an agent.

Response: The Commission believes that, while the definition draws a distinction between an employer and one who is authorized to act on behalf of the employer-i.e., an agent-the definition is clear that the rules that apply to an employer also apply to the employer's agent. Furthermore, any employees of the agent are considered employees for the purposes of this definition.

§819.12. Unlawful Employment Practices

The Commission adopts new §819.12 to delineate and explain the types of employment discrimination, which include (1) discrimination by an employer; (2) discrimination by an employment agency; (3) discrimination by a labor organization; (4) discrimination during admission or participation in a training program; (5) discrimination through retaliation; (6) discrimination by aiding and abetting in discriminatory practices; (7) discrimination through interference with the Commission on Human Rights and CRD; (8) discrimination by obstructing or preventing persons from complying with the Texas Labor Code; and (9) discrimination through notice or advertisement.

SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

§819.21. Civilian Workforce Composition Report

The Commission adopts new §819.21, relating to the data to be utilized for preparation of the civilian workforce composition report pursuant to Texas Labor Code §21.035.

§819.22. Review of Firefighter Tests

The Commission adopts new §819.22 to describe the procedures to be used to review the administration of firefighter tests by local fire departments to determine compliance with Texas Labor Code, Chapter 21. Current rule does not provide for the timely review of firefighter exams. As stated in current rule, no less than three percent of fire departments are to be reviewed each year on a random basis. As a consequence, a fire department may not be reviewed for 30 years. Furthermore, the current rule's review mechanism lacks the ability to identify and prioritize departments most in need of review. Pursuant to the new rule, fire departments may access a list of recommended tests for firefighter positions on the TWC Web site. The Commission clarifies the purpose of the list by substituting the term "recommended" for "preapproved." Recommended tests will be tests that are nationally recognized by independent authorities. Providing a list of recommended tests is intended to assist local fire departments in selecting appropriate testing instruments. However, the ultimate responsibility for ensuring that tests are valid, reliable, and administered in a nondiscriminatory manner rests with the fire department. For those fire departments choosing to use a test not on the recommended list, provisions are made for

CRD to request documentation regarding the reliability and validity of the chosen test. Additionally, the new rule establishes an efficient system for reviewing all fire departments using a desk audit, and then provides for an expanded review for select departments based on a risk-assessment analysis.

§819.23. Review of State Agency Policies and Procedures

The Commission adopts new §819.23 to describe the process to be used to review the personnel policies and procedures employed by state agencies for compliance with Texas Labor Code, Chapter 21.

§819.24. Standard Employment Discrimination Training

The Commission adopts §819.24 to set forth the requirements for standard employment discrimination training for all state employees, including minimum standards for the content of such training.

§819.25. Compliance Employment Discrimination Training

The Commission adopts new §819.25, as directed by Texas Labor Code §21.556, to specify the conditions that trigger compliance training. The new rule defines the term complaint with merit as a complaint that is resolved by either a cause finding or a withdrawal of the complaint with a remedy favorable to the complainant. This definition is consistent with terminology used by the U.S. Equal Employment Opportunity Commission and avoids both the issue of cost inefficiency and prejudice. According to statute, a state agency that receives three or more "complaints of employment discrimination in a fiscal year, other than complaints determined to be without merit" shall provide comprehensive equal employment opportunity training, referred to as compliance training. In the absence of a statutory definition of complaint without merit, the current rule established an administrative processing test that determines merit based on meeting the initial burden of a prima facie case such that the complaint appears to be a potential case worthy of further investigation. This definition has presented several difficulties. First, it is not cost-efficient, necessitating that CRD use additional time and staff to perform the analysis required in the rule in order to ascertain if it is a complaint with merit. Second, employers argue that labeling a complaint with merit before the investigation is complete and a cause decision rendered is prejudicial to the outcome of the cause determination.

§819.26. Standard and Compliance Employment Discrimination Training Delivery

The Commission adopts new §819.26 to set forth the minimum standards for delivering standard and compliance employment discrimination training.

SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

§819.41. Filing a Complaint

The Commission adopts new §819.41 to specify the steps to be taken and the requirements to be met to file an employment discrimination complaint.

Comment: One commenter recommended that the calculation for the 180-day period during which a complaint may be filed should be computed not only from the date the alleged unlawful employment practice occurred, but also from the date the complainant knew or should have known about the practice.

Response: Section 819.41 is based upon the statutory requirements for filing a complaint found in Texas Labor Code §21.201

and the applicable statute of limitations found in §21.202. Allowing a complaint to be filed from the date an employee "knew or should have known" of the alleged unlawful employment practice would be contrary to the statute as written by the legislature.

Comment: One commenter recommended that a bilingual "step by step" notice explaining how to file a complaint be posted in business establishments.

Response: The Commission believes that nothing in this chapter prohibits the Commission on Human Rights from encouraging businesses to take such action. In response to this comment, CRD may wish to expand its existing means of publicizing the procedures for filing complaints.

Comment: One commenter was concerned about the current method of referring an individual who calls CRD to initiate or seek advice on submitting a claim and recommended that a more-established process be developed. The commenter suggested providing potential complainants with a bilingual complaint form and simplified directions for filing a complaint.

Response: The Commission believes the commenter's concerns involve CRD's internal administrative procedures, which are outside of the authority of the rules as set forth in Texas Labor Code, Chapter 21. However, the Commission directs the commenter to the Agency's Web site, which provides, in both English and Spanish, an intake questionnaire and simple instructions for filing a complaint.

§819.42. Legal Representation

The Commission adopts new §819.42 to notify complainants and respondents of their right to be represented by an attorney or designated agent during the course of a complaint process.

§819.43. Investigation of a Perfected Complaint

The Commission adopts new §819.43 to set forth the procedures to be followed by the complainant, respondent, and CRD in the investigation of a perfected complaint.

§819.44. Mediation

The Commission adopts new §819.44 to set forth the procedures involved in voluntary mediation, an option available to complainants and respondents who prefer to resolve the perfected complaint jointly prior to CRD completing the investigation and rendering a decision.

§819.45. Subpoena

The Commission adopts new §819.45 to establish CRD's authority to issue a subpoena to compel attendance or secure evidence relevant to the investigation of a perfected complaint and the rights and responsibilities of all parties involved in such an action.

§819.46. Dismissal of Complaint

The Commission adopts new §819.46 to set forth the conditions under which CRD may dismiss a complaint and CRD's responsibilities should such action be taken.

§819.47. Cause Determination

The Commission adopts new §819.47 to set forth the conditions under which CRD determines if there is reasonable cause to believe that the respondent has engaged in an unlawful employment practice and CRD's responsibilities should such action be taken.

§819.48. No Cause Determination

The Commission adopts new §819.48 to set forth the conditions under which CRD determines if there is no reasonable cause to believe that the respondent has engaged in an unlawful employment practice and CRD's responsibilities should such action be taken.

§819.49. Conciliation

The Commission adopts new §819.49 to set forth CRD's intent to achieve a just resolution once a reasonable cause determination is made. Alternative courses of action are presented depending on whether CRD is successful in securing an agreement between the complainant and respondent to eliminate the unlawful practices and provide appropriate relief for the complainant.

§819.50. Right to File a Civil Action

The Commission adopts new §819.50 to specify the conditions under which CRD shall issue a notice of right to file a civil action permitting the complainant to sue in court.

§819.51. Failure to Issue Notice of Right to File a Civil Action

The Commission adopts new §819.51 to cite that CRD's failure to issue a notice of right to file a civil action within the specified time limit does not affect the complainant's right to file a civil action under Texas Labor Code, Chapter 21.

§819.52. Judicial Enforcement

The Commission adopts new §819.52 to establish CRD's authority to file a civil action against a respondent or intervene in a civil action.

SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

§819.71. Equal Employment Opportunity Deferrals among Federal, State, and Local Agencies

The Commission adopts new §819.71 to set forth the ways in which complaints may be deferred from one level of government to another and to establish at what point the measure for timeliness is triggered.

§819.72. Requirements for a Local Commission

The Commission adopts new §819.72 to identify the procedures to be followed and the conditions to be met for a local commission, recognized by EEOC as a Fair Employment Practices Agency, to be eligible to receive and process complaints.

§819.73. Deferral to Local Commission

The Commission adopts new §819.73 to identify the authority under which a local commission exercises the exclusive right to act upon an employment discrimination complaint and the conditions under which CRD may assume jurisdiction over a complaint deferred to a local commission.

§819.74. Deferral Procedures

The Commission adopts new §819.74 to set forth the responsibilities of the local commission as well as CRD and the procedures involved in deferring an employment discrimination complaint to a local commission.

§819.75. Final Determination of a Local Commission

The Commission adopts new §819.75 to set forth the actions to be taken by a local commission based on the type of decision made regarding an employment discrimination complaint under its jurisdiction.

§819.76. Workshare Agreements

The Commission adopts new §819.76 to specify the means by which the Agency and a local commission shall officially coordinate efforts to process employment discrimination complaints.

SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

§819.91. Preservation and Use

The Commission adopts new §819.91 to establish the requirement that any person under investigation shall retain records pursuant to Texas Labor Code, Chapter 21.

§819.92. Access to CRD Records

The Commission adopts new §819.92 to specify the conditions under which the party to a perfected complaint may have access to CRD's records.

Comment: One commenter questioned whether this section will retain language from the current rule that requires parties to a complaint to meet additional conditions beyond those set forth in the statute, or if the section will be changed to mirror the statute.

Response: The Commission agrees with the comment and modifies the rules by eliminating any conditions for securing CRD records that are not set forth in statute.

§819.93. Disposal of Files and Related Documents

The Commission adopts new §819.93 to set forth the conditions for the retention and disposal of CRD files.

SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

§819.111. Purpose

The Commission adopts new §819.111, which states that the purpose of Subchapters G - L is to establish procedures for CRD to execute its responsibilities in the administration and enforcement of the Texas Fair Housing Act.

§819.112. Definitions

The Commission adopts new §819.112 to define terms that pertain exclusively to those subchapters addressing fair housing practices including Subchapter G, Texas Fair Housing Act Provisions; Subchapter H, Discriminatory Housing Practices; Subchapter I, Texas Fair Housing Act Complaints and Appeals Process; Subchapter J, Fair Housing Deferral to Municipalities; Subchapter K, Fair Housing Administrative Hearings and Judicial Review; and Subchapter L, Fair Housing Fund. Terms defined include accessible or readily accessible to and usable by; accessible building entrance; accessible route; building; common use areas; complaint; controlled substance; disability discriminatory housing practice; entrance; exterior; ground floor; interior; modification; premises; public use areas; site; Texas Fair Housing Act; and United States Fair Housing Act.

SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES

General Comment on Subchapter H

Comment: One commenter contended that the types of discrimination identified as unlawful should be uniform throughout the rules. Specifically, the commenter expressed concern that discrimination on the basis of age is not included among the types of unlawful housing discrimination, while it is included among the types of unlawful employment discrimination.

Response: The Commission disagrees with the comment. CRD's authority to resolve housing discrimination complaints is

based on the Texas Fair Housing Act, which does not include age as an unlawful basis for housing discrimination, but does include familial status in order to address the issue of discrimination involving individuals with children. CRD's authority to resolve employment discrimination complaints derives from Texas Labor Code, Chapter 21, which prohibits employment discrimination based on age.

§819.121. Discrimination Based on Familial Status

The Commission adopts new §819.121, which provides that it is an unlawful housing practice to discriminate based on familial status.

§819.122. Exemptions Based on Familial Status

The Commission adopts new §819.122 to set forth those conditions under which housing designated for the use of elderly residents may be exempted from the provisions of the Texas Fair Housing Act.

§819.123. Discrimination in Sale, Rental, Terms, Conditions, Privileges, Services, and Facilities

The Commission adopts new §819.123 to identify the types of discriminatory actions prohibited with regard to the terms, conditions, or privileges offered with the sale or rental of a dwelling.

Comment: One commenter questioned why some statutory provisions are included in the rules and others are not. Specifically, the commenter asked why statutory language concerning Exemptions to Sales and Rentals is not included.

Response: The Commission's intent is to eliminate language that duplicates that found in statute, unless such language is necessary to the understanding of the rules or to clarify statutory meaning. The Commission believes that the language concerning Exemptions to Sales and Rentals does not meet this criteria; therefore, it is not included.

§819.124. Other Prohibited Sale and Rental Conduct

The Commission adopts new §819.124 to identify the types of discriminatory actions prohibited that involve steering persons toward or away from property, as well as employing discriminatory practices that involve the sale or rental of property.

§819.125. Discriminatory Advertisements, Statements, and Notices

The Commission adopts new §819.125 to explain that print materials and statements may be considered discriminatory if used to express a preference for or limitation on a potential buyer or renter.

§819.126. Discriminatory Representations on the Availability of Dwellings

The Commission adopts new §819.126 to identify the types of prohibited discriminatory actions that provide inaccurate or untrue information about the availability of dwellings.

§819.127. Discriminatory Practices Regarding Entry into a Neighborhood

The Commission adopts new §819.127 to define as unlawful the practice, motivated by profit, of inducing or attempting to induce, or persuading individuals to sell or rent their dwelling by representing that people of a certain race, color, disability, religion, sex, national origin, or familial status are entering the neighborhood.

§819.128. Discrimination in the Selling, Brokering, or Appraising of Residential Real Property

The Commission adopts new §819.128 to define as unlawful any attempt to deny access to or membership in any organization or service related to the selling or renting of dwellings based on race, color, disability, religion, sex, national origin, or familial status.

§819.129. Discrimination in Residential Real Estate Transactions

The Commission adopts new §819.129 to define as unlawful any effort to base the availability, terms, or conditions of a residential real estate transaction on race, color, disability, religion, sex, national origin, or familial status.

§819.130. Discrimination in Making Loans and in the Provision of Other Financial Assistance

The Commission adopts new §819.130 to define as unlawful any failure or refusal to make loans, provide financial assistance, or make information available regarding such assistance based on race, color, disability, religion, sex, national origin, or familial status.

Comment: One commenter advocated that a description of unlawful housing practices be given to individuals applying for financial assistance.

Response: The Commission believes that nothing in this chapter prohibits the Commission on Human Rights from encouraging financial institutions to take such action. In response to this comment, CRD may wish to explore this and other ways to make such information available to applicants for financial assistance for housing.

§819.131. Discrimination in Purchasing Loans

The Commission adopts new §819.131 to define as unlawful the refusal to purchase or the imposition of different terms on the purchase of loans, debts, or securities related to residential real estate dealings based on race, color, disability, religion, sex, national origin, or familial status.

§819.132. Discrimination Based on Disability

The Commission adopts new §819.132 to define as unlawful any attempt to deny or make unavailable the rental or sale of a dwelling based on the disability of the potential buyer or renter or someone associated with either. The rule further prohibits an inquiry as to the nature or severity of a disability excepted under certain stated conditions.

§819.133. Discrimination in Refusing Reasonable Modifications of Existing Premises

The Commission adopts new §819.133 to define as unlawful the denial of permission for an individual with a disability to make reasonable modifications to a dwelling and the rights and obligations of both parties in undertaking modifications.

§819.134. Discrimination in Refusing Reasonable Accommodations

The Commission adopts new §819.134 to define as unlawful the refusal to make reasonable accommodations in rules, policies, practices, or services for individuals with disabilities.

§819.135. Discrimination in Design and Construction Requirements

The Commission adopts new §819.135 to set forth the type of physical accommodations for individuals with disabilities that shall be made to a multifamily dwelling after a certain date.

SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS PROCESS

§819.151. Filing a Complaint

The Commission adopts new §819.151 to specify that a person or the CRD director may file a complaint within a year from the occurrence or termination of an alleged unlawful housing discrimination practice, whichever is later. The new rule also identifies both the steps to be taken and the requirements to be met to file a housing discrimination complaint.

§819.152. Legal Representation

The Commission adopts new §819.152 to notify respondents and complainants of their right to be represented by an attorney or a designated agent during the course of processing a complaint.

§819.153. Investigation of a Complaint

The Commission adopts new §819.153 to set forth the procedures to be followed by the complainant, respondent, and CRD in the investigation of a complaint.

Comment: One commenter asked why a complaint would be filed under two separate statutes.

Response: The reference to "this chapter" is to the Chapter 819 rules, which are designed to implement the Texas Fair Housing Act. Therefore, the Commission clarifies that a complaint is filed only pursuant to statute under the Texas Fair Housing Act.

§819.154. Pattern and Practice Complaints

The Commission adopts new §819.154 to identify the conditions under which a complaint shall be designated as a "patterns and practices complaint," signifying the presence of pervasive or institutional discriminatory practices or complex issues or the involvement of a large number of people.

§819.155. Conciliation

The Commission adopts new §819.155 to explain the role and purpose of conciliation in the housing complaint process. The conciliation process for housing complaints differs from that for employment complaints in the timing of the conciliation. As a term used in processing a housing complaint, conciliation refers to settlement of a dispute by mutual agreement occurring any time beginning with the filing of a complaint and ending with the filing of a charge or the dismissal of the complaint. In an employment complaint, however, the term conciliation refers to such efforts occurring after a determination of cause has been made.

§819.156. Reasonable Cause Determination and Issuance of a Charge

The Commission adopts new §819.156 to specify the actions to be taken by the CRD director, assuming a conciliation agreement has not been reached, in determining whether or not reasonable cause exists to believe that a discriminatory housing practice has occurred. The new rule sets forth actions to be taken based on whether the determination made is a cause or no cause decision or whether the complaint involves the legality of local zoning or land use ordinances.

SUBCHAPTER J. FAIR HOUSING DEFERRAL TO MUNICIPALITIES

§819.171. Deferral

The Commission adopts new §819.171 to set forth the requirements that a HUD-certified municipality must meet in order to receive and process complaints referred by CRD.

§819.172. Memoranda of Understanding

The Commission adopts new §819.172 to specify the means by which the Agency and a municipality officially arrange to coordinate efforts to process housing discrimination complaints.

SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

§819.191. Administrative Hearings

The Commission adopts new §819.191 to provide that administrative hearings shall be conducted by the Agency's Special Hearings Department.

Comment: One commenter asked which agency is referenced in this section.

Response: The Commission clarifies that Chapter 819 references the definitions contained in §800.2, which sets forth definitions for all chapters in Title 40, Part 20 of the Texas Administrative Code relating to the Texas Workforce Commission. As defined therein, the term Agency, whenever mentioned in any chapter of Title 40, Part 20, refers to the Texas Workforce Commission.

§819.192. Ex Parte Communications

The Commission adopts new §819.192 to set forth the conditions under which a commissioner for the Commission on Human Rights or CRD employee may communicate information involving any issue of fact or law in a case covered by this subchapter.

§819.193. Proposal for Decision and Hearing Officer's Report

The Commission adopts new §819.193 to set forth the different requirements for a proposal for decision to the Commission on Human Rights depending on whether the proposal for decision is adverse to any party or not. The new rule also specifies the content for the hearing officer's report.

§819.194. Countersignature by the CRD Director

The Commission adopts new §819.194 to require the CRD director to countersign every hearing officer's report and proposal for decision.

§819.195. Oral Argument before the Commission on Human Rights

The Commission adopts new §819.195 to authorize any party to a complaint to present an oral argument to the Commission on Human Rights before final determination.

§819.196. Pleading Before Order

The Commission adopts new §819.196 to authorize the CRD director to permit or request parties to submit briefs and proposed findings of fact after the hearing and before the final decision by the Commission on Human Rights.

§819.197. Form and Content of the Order

The Commission adopts new §819.197 to authorize the Commission on Human Rights to adopt, amend, or reject the hearing officer's proposal for decision and to set forth the conditions under which the Commission on Human Rights may vacate, modify, or change a finding of a proposed order.

§819.198. Final Order

The Commission adopts new §819.198 to specify the form that a final order shall take if it is adverse to any party, and the requirements for including findings of fact and conclusions of law.

§819.199. Rehearing

The Commission adopts new §819.199 to specify the procedures and timeliness for requesting a rehearing, after a final order is issued. In subsection (c), the Commission clarifies, without altering the process or substance of the rule, by identifying the three possible dispositions for a motion for rehearing. The new rule details the deadlines to be met by all parties involved.

§819.200. Judicial Review

The Commission adopts new §819.200 to allow a party involved in a complaint to file a petition for judicial review under the substantial evidence rule.

§819.201. Prohibited Interference, Coercion, Intimidation, or Retaliation

The Commission adopts new §819.201 to define what actions constitute unlawful conduct with regard to interfering with, coercing, intimidating, or retaliating against individuals involved with a housing discrimination issue.

SUBCHAPTER L. FAIR HOUSING FUND

§819.221. Fair Housing Fund

The Commission adopts new §819.221 to provide for the creation of a fund to receive gifts, grants, and assessments of financial penalties that may be used for the administration of the Texas Fair Housing Act.

PART III. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of the chair of the Commission on Human Rights and the CRD director. During the public comment period, the Commission and the CRD director presented and explained the proposed rules to the Commission on Human Rights.

The Commission received public comments from:

Patricia Asip, member of the Texas Commission on Human Rights

Shara Michalka, member of the Texas Commission on Human Rights

Vanessa Gonzalez, Allison, Bass and Associates, L.L.P.

PART IV. RULE REPEAL

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§819.1 - 819.6

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 7, 2005.

TRD-200503902

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Effective date: September 27, 2005

Proposal publication date: July 1, 2005

For further information, please call: (512) 475-0829



SUBCHAPTER B. COMMISSION

40 TAC §§819.11 - 819.21

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

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For further information, please call: (512) 475-0829



SUBCHAPTER C. LOCAL COMMISSIONS

40 TAC §§819.51 - 819.55

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Deputy Director for Workforce and UI Policy

Texas Workforce Commission

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For further information, please call: (512) 475-0829



SUBCHAPTER D. ADMINISTRATIVE REVIEW

40 TAC §§819.71 - 819.94

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

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For further information, please call: (512) 475-0829



SUBCHAPTER E. JUDICIAL ACTION

40 TAC §819.101

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

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For further information, please call: (512) 475-0829



SUBCHAPTER F. REPORTS AND RECORDKEEPING

40 TAC §819.111

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Reagan Miller

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Texas Workforce Commission

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For further information, please call: (512) 475-0829



SUBCHAPTER G. CONFORMITY

40 TAC §819.121

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. REVIEW OF FIRE FIGHTER TESTS

40 TAC §819.131

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

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SUBCHAPTER I. GENERAL PROVISIONS

40 TAC §§819.151 - 819.157

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. COMMISSION

40 TAC §819.161

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

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SUBCHAPTER K. REFERRAL TO MUNICIPALITIES

40 TAC §§819.171 - 819.173

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

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SUBCHAPTER L. EXEMPTED RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS

40 TAC §§819.181 - 819.188

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

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SUBCHAPTER M. DISCRIMINATORY HOUSING PRACTICES

40 TAC §§819.191 - 819.199, 819.210 - 819.218

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination;

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SUBCHAPTER N. ADMINISTRATIVE ENFORCEMENT

40 TAC §§819.301 - 819.328

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

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SUBCHAPTER O. ADMINISTRATIVE HEARING PROCEEDINGS

40 TAC §§819.401 - 819.416

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The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas

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SUBCHAPTER P. PROMPT JUDICIAL ACTION

40 TAC §§819.421 - 819.423

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

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SUBCHAPTER Q. ENFORCEMENT BY PRIVATE PERSON

40 TAC §§819.431 - 819.435

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

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SUBCHAPTER R. OTHER ACTION BY THE COMMISSION

40 TAC §§819.441 - 819.443

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

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SUBCHAPTER S. PREVAILING PARTY

40 TAC §819.451

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SUBCHAPTER T. FAIR HOUSING FUND

40 TAC §819.461

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

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SUBCHAPTER U. STATUTORY AUTHORITY

40 TAC §819.471

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The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas

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SUBCHAPTER V. EFFECTIVE DATE

40 TAC §819.481

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The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

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SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§819.1 - 819.3

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination;

Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

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SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

40 TAC §§819.10 - 819.12

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.11. Definitions.

The following words and terms, when used in Subchapter B, Equal Employment Opportunity Provisions; Subchapter C, Equal Employment Opportunity Reports, Training, and Reviews; Subchapter D, Equal Employment Opportunity Complaints and Appeals Process; Subchapter E, Equal Employment Opportunity Deferrals; and Subchapter F, Equal Employment Opportunity Records and Recordkeeping shall have the following meanings, unless the context clearly indicates otherwise.

(1) Bona fide occupational qualification--A qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a factual basis for believing that no members of the excluded group would be able to satisfactorily perform the duties of the job with safety and efficiency.

(2) Civil Rights Act--The Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 and the Civil Rights Act of 1991; the Age Discrimination in Employment Act of 1976, as amended; the Rehabilitation Act of 1973, as amended; and the Americans with Disabilities Act of 1990, as amended.

(3) Complaint--A written statement made under oath stating that an unlawful employment practice has been committed, setting forth the facts on which the complaint is based, and received within 180 days of the alleged unlawful employment practice.

(4) Conciliation--The settlement of a dispute by mutual written agreement in order to avoid litigation where a determination

has been made that there is reasonable cause to believe an unlawful employment practice has occurred.

(5) Disability--A mental or physical impairment that substantially limits at least one major life activity of an individual, a record of such mental or physical impairment, or being regarded as having such an impairment as set forth in §3(2) of the Americans with Disabilities Act of 1990, as amended, and Texas Labor Code §21.002(6).

(6) Employer--A person who is engaged in an industry affecting commerce and who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of that person. The term includes an individual elected to public office in Texas or a political subdivision of Texas, or a political subdivision and any state agency or instrumentality, including public institutions of higher education, regardless of the number of individuals employed.

(7) Local commission--Created by one or more political subdivisions acting jointly, pursuant to Texas Labor Code §21.152, and recognized as a Fair Employment Practices Agency by EEOC pursuant to Title VII of the U.S. Civil Rights Act, Title VII, §717(c), as amended by the Equal Employment Opportunity Act of 1972, the Civil Rights Act of 1991, and the Americans With Disabilities Act of 1990, as amended.

(8) Mediation--A process to settle a dispute by mutual written agreement among the complainant, respondent, and CRD prior to reasonable cause determination or dismissal of a perfected complaint.

(9) Perfected complaint--An employment discrimination complaint that CRD has determined meets all of the requirements of Texas Labor Code, Chapter 21, and for which CRD will initiate an investigation.

§819.12. Unlawful Employment Practices.

(a) Discrimination by Employer. An employer commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

(2) limits, segregates, or classifies an employee or applicant for employment in a manner that deprives or tends to deprive an individual of an employment opportunity or adversely affects in any other manner the status of an employee.

(b) Discrimination by Employment Agency. An employment agency commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it:

(1) fails or refuses to refer for employment or discriminates in any other manner against an individual; or

(2) classifies or refers an individual for employment on that basis.

(c) Discrimination by Labor Organization. A labor organization commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it:

(1) excludes or expels from membership or discriminates in any other manner against an individual; or

(2) limits, segregates, or classifies a member or an applicant for membership, or classifies or fails or refuses to refer for employment an individual in a manner that:

(A) deprives or tends to deprive an individual of any employment opportunity;

(B) limits an employment opportunity or adversely affects in any other manner the status of an employee or of an applicant for employment; or

(C) causes or attempts to cause an employer to violate this subchapter.

(d) Admission or Participation in Training Program. An employer, labor organization, or joint labor management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it discriminates against an individual in admission to or participation in the program, unless a training or retraining opportunity or program is provided under an affirmative action plan approved by federal or state law, rule, or court order. The prohibition against discrimination based on age applies only to individuals who are at least 40 years of age but younger than 56 years of age.

(e) Retaliation. An employer, employment agency, or labor organization, commits an unlawful employment practice based on race, color, disability, religion, sex, national origin, or age if the employer, employment agency, or labor organization retaliates or discriminates against a person who:

(1) opposes a discriminatory practice;

(2) makes or files a charge;

(3) files a complaint; or

(4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

(f) Aiding or Abetting Discrimination. An employer, employment agency, or labor organization commits an unlawful employment practice if it aids, abets, incites, or coerces a person to engage in an unlawful discriminatory practice based on race, color, disability, religion, sex, national origin, or age.

(g) Interference with the Commission on Human Rights and CRD. An employer, employment agency, or labor organization commits an unlawful employment practice if it willfully interferes with the performance of a duty or the exercise of a power by the Commission on Human Rights or CRD.

(h) Prevention of Compliance. An employer, employment agency, or labor organization, commits an unlawful employment practice if it willfully obstructs or prevents a person from complying with Texas Labor Code, Chapter 21, or a rule adopted or order issued under Texas Labor Code, Chapter 21.

(i) Discriminatory Notice or Advertisement

(1) An employer, employment agency, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if it prints or publishes or causes to be printed or published a notice or advertisement relating to employment that:

(A) indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and

(B) concerns an employee's status, employment, or admission to or membership or participation in a labor organization or training or retraining program.

(2) A bona fide occupational qualification is an affirmative defense to discrimination.

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SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

40 TAC §§819.21 - 819.26

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.22. Review of Firefighter Tests.

(a) CRD shall review the initial tests administered by a fire department, as provided in Texas Government Code, Chapter 419. The initial tests defined as written tests, physical tests, and assessment center tests for firefighter positions, are used to measure the ability of a person to perform the essential functions of the position.

(b) CRD shall use the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. 1607, to conduct the review of the administration of initial tests by fire departments.

(c) CRD shall develop a list of recommended tests for firefighter positions that are nationally recognized tests by independent authorities. The tests will be available on the Agency's Web site.

(d) Fire departments that use tests from CRD's list of recommended tests are presumed to be in compliance with the law. However, if CRD perceives the need to review a fire department that is using such recommended tests, nothing shall prevent such review.

(e) Fire departments that use a test not included on the recommended list shall submit, upon request by CRD, documentation regarding the reliability and validity of the chosen test.

(f) Each fire department shall submit documentation concerning the administration of its initial tests, as required in this section. CRD shall perform a desk audit by reviewing these documents using risk-assessment criteria. Fire departments selected for a desk audit shall receive notice by mail. Documents to be submitted for a desk audit include, but are not limited to:

(1) a copy of the initial test used. If it is not from CRD's recommended list of tests, then documentation regarding the reliability and validity of the test used;

(2) a description of how such test is administered and a copy of applicable policies and procedures governing the administration of such test; and

(3) information and documentation of prior complaints lodged against the fire department concerning discrimination in selection of personnel for a firefighter position.

(g) CRD shall evaluate the requested information set forth in subsection (f) of this section as part of its risk-assessment analysis. Based on the analysis, fire departments may be selected for expanded review, including on-site investigation. CRD shall notify a fire department selected for expanded review by mail.

§819.23. Review of State Agency Policies and Procedures.

(a) CRD shall review the personnel policies and procedures of each state agency once every six years on a staggered schedule to determine compliance with Texas Labor Code, Chapter 21.

(b) CRD shall notify a state agency of its review of the agency's personnel policies and procedures by mail at the beginning of the fiscal year in which CRD is to conduct the review. The review of each state agency shall be completed and recommendations issued on or before the one-year anniversary date on which CRD issued its notification letter to the agency head.

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SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

40 TAC §§819.41 - 819.52

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.43. Investigation of a Perfected Complaint.

(a) The CRD director shall determine the nature and scope of the investigation within the context of the allegations set forth in the perfected complaint.

(b) CRD may, as part of a perfected complaint investigation, require a fact-finding conference with the complainant and the respondent prior to a determination on a perfected complaint. A fact-finding conference primarily is an investigative forum intended to define the issues, determine which elements are undisputed, and solicit information regarding the allegations.

(c) At all reasonable times in the perfected complaint investigation, the CRD director shall have access to:

(1) necessary witnesses for examination under oath or affirmation; and

(2) records, documents, and other information relevant to the investigation of alleged violations of Texas Labor Code, Chapter 21, for inspection and copying.

(d) As part of the perfected complaint investigation, CRD may request information relevant to the alleged violations of Texas Labor Code, Chapter 21. In obtaining this information, CRD may use, but is not limited to using, any of the following:

(1) Oral and video interviews and depositions;

(2) Written interrogatories;

(3) Production of documents and records;

(4) Requests for admissions;

(5) On-site inspection of respondent's facilities;

(6) Written statements or affidavits; or

(7) Other forms of discovery authorized by the Administrative Procedure Act, Texas Government Code §§2001.081-2001.103, or the Texas Rules of Civil Procedure.

(e) CRD may establish time requirements regarding responses to requests for information relevant to an investigation of alleged violations of Texas Labor Code, Chapter 21. The CRD director may extend such time requirements for good cause shown.

(f) As part of a perfected complaint investigation, CRD may accept from the complainant or respondent a statement of position or information regarding the allegations in the perfected complaint. CRD shall accept only a sworn or affirmed written statement of position submitted by the respondent setting forth the facts and circumstances relevant to an investigation of alleged violations of Texas Labor Code, Chapter 21.

§819.46. Dismissal of Complaint.

(a) The CRD director may dismiss a complaint if:

(1) it is not filed timely;

(2) it fails to state a claim under Texas Labor Code, Chapter 21;

(3) a complainant fails to perfect a complaint within 10 days of the receipt of the complaint; or

(4) a complainant fails to cooperate, fails or refuses to appear or to be available for interviews or conferences, or fails or refuses to provide requested information. Prior to dismissing the complaint, the complainant shall be notified and given a reasonable time to respond.

(b) CRD shall notify the complainant and the respondent, and any agencies, as required by law, by mail of its dismissal of a complaint.

(c) CRD shall notify the complainant, by mail, of the complainant's right to file a civil action against the respondent named in the perfected complaint pursuant to Texas Labor Code §21.208 and §21.252, and §819.50 of this subchapter.

§819.48. Conciliation.

(a) When a letter of cause determination has been issued, CRD shall attempt to eliminate such unlawful employment practice by conciliation, and to secure a just resolution through a conciliation agreement signed by the complainant, respondent, and the CRD director.

(b) CRD shall obtain proof of the respondent's compliance with a conciliation agreement before the case is closed.

(c) CRD shall notify the complainant and respondent by mail of an unsuccessful conciliation agreement. CRD shall then inform the complainant by mail of the complainant's right to file a civil action against the respondent named in the perfected complaint, pursuant to Texas Labor Code §§21.208-21.252.

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For further information, please call: (512) 475-0829



SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

40 TAC §§819.71 - 819.76

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.71. Equal Employment Opportunity Deferrals among Federal, State, and Local Agencies.

For the purpose of satisfying the filing requirements of Texas Labor Code §21.201, the following shall apply:

(1) For a complaint filed with CRD over which EEOC has deferred jurisdiction, timeliness of the complaint shall be determined by the date the complaint is received by CRD.

(2) For a complaint filed with EEOC and deferred to CRD, timeliness of the complaint shall be determined by the date on which the complaint is received by EEOC.

(3) For a complaint filed with a local commission and deferred to CRD, timeliness of the complaint shall be determined by the date on which the complaint is received by the local commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Reagan Miller

Deputy Director for Workforce and UI Policy

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SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

40 TAC §§819.91 - 819.93

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.92. Access to CRD Records.

Pursuant to Texas Labor Code §21.304 and §21.305, CRD shall, on written request of a party to a perfected complaint filed under Texas Labor Code §21.201, allow the party access to CRD's records, unless the perfected complaint has been resolved through a voluntary settlement or conciliation agreement:

(1) following the final action of CRD; or

(2) if a party to the perfected complaint or the party's attorney certifies in writing that a civil action relating to the perfected complaint is pending in federal court alleging a violation of federal law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

40 TAC §819.111, §819.112

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.112. Definitions.

The following words and terms, when used in Subchapter G, Texas Fair Housing Act Provisions; Subchapter H, Discriminatory Housing Practices; Subchapter I, Texas Fair Housing Act Complaints and Appeals Process; Subchapter J, Fair Housing Deferral to Municipalities; Subchapter K, Fair Housing Administrative Hearings and Judicial Review; and Subchapter L, Fair Housing Fund, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accessible or readily accessible to and usable by--A public or common use area that is accessible by individuals with disabilities, as set forth in Texas Property Code §301.025(c). Compliance with the appropriate requirements of the American National Standards Institute (ANSI) for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(2) Accessible building entrance--A building entrance that is accessible by individuals with disabilities, as set forth in Texas Property Code §301.025(c). Compliance with the appropriate requirements of ANSI for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(3) Accessible route--A route that is accessible by individuals with disabilities, as set forth in Texas Property Code §301.025(c). Compliance with the appropriate requirements of ANSI for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(4) Building--A structure, facility, or the portion thereof that contains or serves one or more dwelling units.

(5) Common use areas--Rooms, spaces, or elements inside or outside of a building that are made available for the use of residents or the guests of a building. These areas include, but are not limited to, hallways, lounges, lobbies, laundry rooms, refuse rooms, mailrooms, recreational areas, and passageways among and between buildings.

(6) Complaint--A written statement made under oath stating that an unlawful housing practice has been committed, setting forth the facts on which the complaint is based, and received within one year of the date the alleged unlawful housing practice occurred or terminated, whichever is later, and for which CRD shall initiate an investigation.

(7) Controlled substance--Any drug or other substance or immediate precursor as defined in the Controlled Substances Act §102, 21 U.S.C. §802.

(8) Disability--A mental or physical impairment that substantially limits at least one major life activity, a record of such an impairment, or being regarded as having such an impairment. The term does not include current illegal use of or addiction to any drug or illegal or federally controlled substance; and reference to "an individual with a disability" or perceived as "disabled" does not apply to an individual based on that individual's sexual orientation or because that individual is a transvestite. As used in this definition, physical or mental impairment includes:

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance);

(C) any major life activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(D) having a record of such an impairment such as a history of, or misclassification as having, a mental or physical impairment that substantially limits one or more major life activity; and

(E) being regarded as having a physical or mental impairment that does not substantially limit one or more major life activity but that is treated by another person as constituting such a limitation; having a physical or mental impairment that substantially limits one or more major life activity only as a result of the attitudes of others toward such impairment; or having no physical or mental impairment but is treated by another person as having such an impairment.

(9) Discriminatory housing practice--An action prohibited by Texas Fair Housing Act, Subchapter B, or conduct that is an offense under Texas Fair Housing Act, Subchapter I.

(10) Entrance--Any access point to a building or portion of a building used by residents for the purpose of entering the building.

(11) Exterior--All areas of the premises outside of an individual dwelling unit.

(12) Ground floor--Within a building, any floor with an entrance on an accessible route. A building may have more than one ground floor.

(13) Interior--The spaces, parts, components, or elements of an individual dwelling unit.

(14) Modification--Any change to the public or common use areas of a building or any change to a dwelling unit.

(15) Premises--The interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

(16) Public use areas--Interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

(17) Site--A parcel of land bounded by a property line or a designated portion of a public right of way.

(18) Texas Fair Housing Act--Texas Property Code, Chapter 301.

(19) United States Fair Housing Act--Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES

40 TAC §§819.121 - 819.135

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

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SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS PROCESS

40 TAC §§819.151 - 819.156

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.151. *Filing a Complaint.*

(a) A person may telephone, write, visit, e-mail, fax, or otherwise contact CRD to obtain information on filing a complaint with CRD.

(b) At the complainant's request, CRD:

(1) shall counsel with the complainant about the facts and circumstances that constitute the alleged unlawful housing practice; and

(2) shall assist the complainant with preparation of the complaint if the facts and circumstances constitute an alleged unlawful housing practice; or

(3) may advise the complainant if the facts and circumstances presented to CRD do not appear to constitute an unlawful housing practice.

(c) The complaint shall be filed in writing and under oath with CRD by mail, fax, or in person with:

(1) the CRD office on a CRD-provided form;

(2) a HUD office; or

(3) a local municipality certified by HUD.

(d) The CRD director may require complaints to be made in writing, under oath, on a prescribed form. The complaint shall include the following information:

(1) The name and address of the complainant;

(2) The name and address of the respondent;

(3) A description and address of the dwelling that is involved, if appropriate;

(4) The basis for the alleged discriminatory housing practices, which may include any of the following: race, color, disability, religion, sex, national origin, or familial status;

(5) A concise statement of the facts and circumstances that constitute alleged discriminatory housing practices under the Texas Fair Housing Act, including identification of personal harm, reason given to complainant by respondent for the action taken; and

(6) A declaration of unlawful discrimination under federal or state law.

(e) A complaint shall be filed on or before the first anniversary of the date the alleged discriminatory housing practice occurs or terminates, whichever is later.

(f) The date of the filing of the complaint is the date when it is received by CRD or dual-filed with HUD, except when the CRD director determines that a complaint is timely filed for the purposes of the one-year period for filing of complaints upon submission of written information (including information provided by telephone by the complainant and documented by CRD) that is substantially equivalent to the information identified in subsection (d) of this section. When a

complaint alleges discriminatory housing practices that are continuing, as manifested in a number of incidents of such conduct, the complaint shall be timely when filed within one year of the last alleged occurrence.

(g) A complaint may be amended to cure technical defects or omissions, or to clarify and amplify allegations made therein. Such amendment or amendments alleging additional acts that constitute unlawful housing practices related to or growing out of the subject matter of the original complaint shall relate back to the date the complaint was first filed. CRD shall provide a copy of the complaint to the respondent. An amended complaint shall be subject to the procedures set forth in applicable law.

(h) The CRD director may file a complaint when the CRD director receives information from a credible source that one or more individuals may have violated the rights of one or more individuals protected by the Texas Fair Housing Act. A complaint filed by the CRD director shall be considered for approval by the Commission on Human Rights at its first regularly scheduled meeting following the filing of the complaint. Upon a majority vote of the Commission on Human Rights, the complaint is approved and any investigation of the complaint shall continue. If the Commission on Human Rights does not approve the complaint, such complaint shall be withdrawn by CRD.

(i) The complainant and respondent shall be notified periodically by CRD of the status of their complaint, unless the notice would jeopardize an undercover investigation by another state, federal, or local government.

(j) Upon the acceptance of a complaint, the CRD director shall notify, by mail, each complainant on whose behalf the complaint was filed. The notice shall:

- (1) acknowledge the filing of the complaint and state the date that the complaint was accepted for filing;
- (2) include a copy of the complaint;
- (3) advise the complainant of the time limits applicable to complaint processing and of the procedural rights and obligations of the complainant under the Texas Fair Housing Act and this chapter;
- (4) advise the complainant of his or her right to commence a civil action under the Texas Fair Housing Act, Subchapter H, and federal law, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice shall state that the computation of this two-year period excludes any time during which an administrative hearing is pending under this chapter and Texas Fair Housing Act, Subchapter E, with respect to a complaint or charge based on the alleged discriminatory housing practice; and
- (5) advise the complainant that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation, conciliation, or an administrative proceeding under this chapter is a discriminatory housing practice that is prohibited under the Texas Fair Housing Act and this chapter.

§819.153. Investigation of a Complaint.

(a) Upon the acceptance of a complaint under this chapter, CRD shall initiate an investigation. The CRD director may initiate an investigation to determine whether a complaint should be filed under this chapter and the Texas Fair Housing Act, Subchapter E. Such investigations shall be conducted in accordance with the procedures set forth in this chapter.

(b) The CRD director shall determine the scope and nature of the investigation within the context of the allegations set forth in the complaint.

(c) At all reasonable times in the complaint investigation, the CRD director shall have access to:

(1) necessary witnesses for examination under oath or affirmation; and

(2) records, documents, and other information relevant to the investigation of alleged violations of the Texas Fair Housing Act, for inspection and copying.

(d) Within 20 days of the acceptance of a complaint or amended complaint under this chapter, the CRD director shall serve a notice on each respondent by regular mail. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation under the Texas Fair Housing Act, Subchapter E, and this chapter, as a person who is alleged to be engaged or to have engaged in the discriminatory housing practice upon which the complaint is based, may be joined as an additional or substitute respondent by service of a notice on the person under this section within 10 days of identification.

(e) The notice to a respondent shall include, but not be limited to, the following:

(1) Identification of the alleged discriminatory housing practice upon which the complaint is based, and a copy of the complaint;

(2) Date that the complaint was accepted for filing;

(3) Time limits applicable to complaint processing under this chapter and the procedural rights and obligations of the respondent under the Texas Fair Housing Act, and this chapter, including the opportunity to submit an answer to the complaint within 10 days of the receipt of the notice;

(4) Complainant's right to commence a civil action under the Texas Fair Housing Act, Subchapter H, and federal law, not later than two years after the occurrence or termination of the alleged discriminatory housing practice; an explanation that the computation of the two-year period excludes any time during which an administrative hearing is pending under this chapter or the Texas Fair Housing Act, Subchapter E, with respect to a complaint or charge based on the alleged discriminatory housing practice;

(5) If the person is not named in the complaint, but is being joined as an additional or substitute respondent, an explanation of the basis for the CRD director's belief that the joined person is properly joined as a respondent;

(6) Instruction that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation, conciliation, or an administrative proceeding under this chapter is a discriminatory housing practice that is prohibited under the Texas Fair Housing Act;

(7) Invitation to enter into a conciliation agreement for the purpose of resolving the complaint; and

(8) Initial request for information and documentation concerning the facts and circumstances surrounding the alleged discriminatory housing practice set forth in the complaint.

(f) The respondent may file an answer not later than 10 days after receipt of the notice described in this section. The respondent may assert any defense that might be available to a defendant in a court of law. The answer shall be signed and affirmed by the respondent. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge."

(g) An answer may be reasonably and fairly amended at any time with the consent of the CRD director.

(h) CRD may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative proceeding under the Texas Fair Housing Act, Subchapter E. The CRD director shall have the power to issue subpoenas described under the Texas Fair Housing Act, Subchapter D, in support of the investigation.

(i) As part of the complaint investigation, CRD may request information relevant to the alleged violations of the Texas Fair Housing Act. In obtaining this information, CRD may use, but is not limited to using, any of the following:

- (1) Oral and video interviews and depositions;
- (2) Written interrogatories;
- (3) Production of documents and records;
- (4) Requests for admissions;
- (5) On-site inspection of respondent's facilities;
- (6) Written statements or affidavits; or

(7) Other forms of discovery authorized by the Administrative Procedure Act, Texas Government Code §§2001.081-2001.103, or the Texas Rules of Civil Procedure.

(j) CRD may establish time requirements regarding responses to requests for information relevant to an investigation of alleged violations of the Texas Fair Housing Act. The CRD director may extend such time requirements for good cause shown.

(k) As part of a complaint investigation, CRD may accept from the complainant or respondent a statement of position or information regarding the allegations in the complaint. CRD shall accept only a sworn or affirmed written statement of position submitted by the respondent setting forth the facts and circumstances relevant to an investigation of alleged violations of the Texas Fair Housing Act.

(l) CRD shall complete the initial investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint.

(m) The complaint shall remain open until a no reasonable cause determination is made, a charge is made, or a conciliation agreement is executed and approved under this chapter and the Texas Fair Housing Act, Subchapter E.

(n) At the end of each investigation under this chapter, CRD shall prepare a final investigative report. The investigative report shall contain:

- (1) the names and dates of contacts with witnesses. The report shall not disclose the names of witnesses that request anonymity; however, the names of such witnesses may be required to be disclosed in the course of an administrative hearing or a civil action;
- (2) a summary and the dates of correspondence and other contacts with the complainant and the respondent;
- (3) a summary description of other pertinent records;
- (4) a summary of witness statements; and
- (5) answers to interrogatories.

(o) A final investigative report may be amended if additional evidence is discovered.

(p) CRD shall provide a summary of the final determination and shall make available the full investigative report to the complainant and the respondent.

§819.156. Reasonable Cause Determination and Issuance of a Charge.

(a) If a conciliation agreement under this chapter and the Texas Fair Housing Act, Subchapter E, has not been executed by the complainant and the respondent, and approved by the CRD director, the CRD director on behalf of the Commission on Human Rights, within the time limits set forth in subsection (f) of this section, shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred. The reasonable cause determination shall be based solely on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent and otherwise disclosed during the investigation. In making the reasonable cause determination, the CRD director shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in state district court.

(b) If the CRD director determines that reasonable cause exists, the CRD director shall immediately issue a charge under the Texas Fair Housing Act, Subchapter E, and this chapter on behalf of the complainant, and shall notify the complainant and the respondent of this determination by certified mail or personal service.

(c) If the CRD director determines that no reasonable cause exists, the CRD director shall issue a short written statement of the facts upon which the CRD director has based the no reasonable cause determination; dismiss the complaint; notify the complainant and the respondent of the dismissal (including the written statement of facts) by certified mail or personal service; and make public disclosure of the dismissal.

(d) If the CRD director determines that the matter involves the legality of local zoning or land use laws or ordinances, the CRD director, in lieu of making a determination regarding reasonable cause, shall refer the investigative materials to the Office of the Attorney General for appropriate action under the Texas Fair Housing Act, Subchapter G, and shall notify the complainant and the respondent of this action by certified mail or personal service.

(e) The CRD director may not issue a charge under this chapter and the Texas Fair Housing Act, Subchapter E, regarding an alleged discriminatory housing practice, if a complainant has commenced a civil action under federal or state law seeking relief with respect to the alleged discriminatory housing practice. If a charge may not be issued because of the commencement of a civil action, the CRD director shall notify the complainant and the respondent by certified mail or personal service.

(f) The CRD director shall make a reasonable cause determination within 100 days after filing of the complaint.

(g) If the CRD director is unable to make the determination within the 100-day period, the CRD director shall notify the complainant and the respondent, by certified mail or personal service, of the reasons for the delay.

(h) The CRD director shall notify the complainant and respondent, and any aggrieved person on whose behalf a complaint has been filed, that they may elect to have the claims asserted in the charge decided in a civil action, as provided in Texas Property Code §301.131(b), or an administrative hearing pursuant to §819.191 of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. FAIR HOUSING DEFERRAL TO MUNICIPALITIES

40 TAC §819.171, §819.172

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

40 TAC §§819.191 - 819.201

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.199. *Rehearing.*

(a) A motion for rehearing is not required to exhaust all administrative remedies. A motion for rehearing shall be made before the expiration of 21 calendar days after the date of the Commission on Human Rights' final order, as set forth in §819.198 of this subchapter. Any reply to a motion for rehearing shall be filed with the Commission on Human Rights before the expiration of 30 calendar days after the date of the Commission on Human Rights' final order, as set forth in §819.198 of this subchapter. A party filing a motion for rehearing or a reply to a motion for rehearing shall serve a copy on each party within the filing deadline.

(b) The Commission on Human Rights may, by written order, extend the time for filing motions and replies and for taking Commission on Human Rights action. No extension may extend the period for Commission on Human Rights action beyond 90 days after the date of the final order, as set forth in §819.198 of this subchapter. In the event of an extension, a motion for rehearing is denied on the date fixed by the written order or, in the absence of a fixed date, 90 days from the date of the final order, as set forth in §819.198 of this subchapter.

(c) If a party files a motion for rehearing, the Commission on Human Rights' may:

- (1) grant such motion and remand for rehearing;
- (2) deny such motion as set forth in §819.198 of this subchapter, either expressly or by operation of law; or
- (3) render a decision and issue an order that no rehearing shall be necessary because imminent peril to the public health, safety, or welfare requires immediate effect be given to the final order.

(d) If the Commission on Human Rights does not act on the motion for rehearing within 45 calendar days, the motion is denied by operation of law and the order is final.

§819.200. *Judicial Review.*

(a) A person who has exhausted all administrative remedies available under the Texas Fair Housing Act and who is aggrieved by a final order of the Commission on Human Rights is entitled to judicial review under the substantial evidence rule as set forth in the Administrative Procedure Act §§2001.001 et seq.

(b) Proceedings for judicial review are instituted by filing a petition within 30 calendar days after a final order is issued.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. FAIR HOUSING FUND

40 TAC §819.221

The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it

deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

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REVIEW OF AGENCY RULES

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) publishes this notice of intention to review Chapter 25, Substantive Rules Applicable to Electric Service Providers pursuant to Texas Government Code §2001.039, *Agency Review of Existing Rules*. The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at www.puc.state.tx.us. Project Number 31538, *Review of Chapter 25 - Electric Substantive Rules Pursuant to the Administrative Procedure Act §2001.039*, is assigned to this proceeding.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039, this review is to assess whether the reason for adopting or readopting the rules continues to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each rule section in Chapter 25 continues to exist. If it is determined during this review that any section of Chapter 25 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding. This notice of intention to review Chapter 25 has no effect on the sections as they currently exist.

Adriana Gonzales, Rules Coordinator, has determined that for each year of the first five-year period the sections are in effect there will be no new fiscal implications for state or local government as a result of enforcing or administering these sections that are not already in effect as a result of the previous adoption of these sections.

Ms. Gonzales has determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing these sections will be: protection of the public interest inherent in the rates and services of public utilities; monitoring of the established regulatory system to assure rates, operations, and services that are just and reasonable to the consumers and utilities; assurance of high-quality service to customers; and a healthy marketplace for competition among electric service providers. There will be no new effect on small businesses or micro-businesses as a result of enforcing these sections that is not already in effect as a result of the previous adoption of these sections. There are no new anticipated economic costs to persons who are required to comply with these sections as noticed for review that are not already in effect as a result of the previous adoption of these sections.

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

Ms. Gonzales has also determined that for each year of the first five years the sections are in effect there should be no effect on a local economy as a result of this review, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the review of Chapter 25 (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. When filing comments interested persons are requested to comment on the sections in the same order they are found in the chapter and to clearly designate which section is being commented upon. All comments should refer to Project Number 31538.

The rules subject to this review are proposed for publication under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039 which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Texas Government Code §2001.039; Texas Utilities Code Annotated, Title II, Public Utility Regulatory Act; and Title IV, Chapters 161, 163, 181, 182, 183, 184, and 185.

SUBCHAPTER A. GENERAL PROVISIONS.

- 16 TAC §25.1. Purpose and Scope of Rules.
- 16 TAC §25.2. Cross-Reference Transition Provision.
- 16 TAC §25.3. Severability Clause.
- 16 TAC §25.4. Statement of Nondiscrimination.
- 16 TAC §25.5. Definitions.
- 16 TAC §25.6. Cost of Copies of Public Information.

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION.

- 16 TAC §25.21. General Provisions of Customer Service and Protection Rules.
- 16 TAC §25.22. Request for Service.
- 16 TAC §25.23. Refusal of Service.
- 16 TAC §25.24. Credit Requirements and Deposits.
- 16 TAC §25.25. Issuance and Format of Bills.
- 16 TAC §25.26. Spanish Language Requirements.
- 16 TAC §25.27. Retail Electric Service Switchovers.

16 TAC §25.28. Bill Payment and Adjustments.

16 TAC §25.29. Disconnection of Service.

16 TAC §25.30. Complaints.

16 TAC §25.31. Information to Applicants and Customers.

16 TAC §25.41. Price to Beat.

16 TAC §25.43. Provider of Last Resort (POLR).

SUBCHAPTER C. QUALITY OF SERVICE.

16 TAC §25.51. Power Quality.

16 TAC §25.52. Reliability and Continuity of Service.

16 TAC §25.53. Emergency Operations Plan.

SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION.

16 TAC §25.71. General Procedures, Requirements and Penalties.

16 TAC §25.72. Uniform System of Accounts.

16 TAC §25.73. Financial and Operating Reports.

16 TAC §25.74. Reports on Sale of Property and Mergers.

16 TAC §25.75. Reports on Sale of 50% or More of Stock.

16 TAC §25.76. Gross Receipts Assessment Report.

16 TAC §25.77. Payments, Compensation, and Other Expenditures.

16 TAC §25.78. State Agency Utility Account Information.

16 TAC §25.79. Equal Opportunity Reports.

16 TAC §25.80. Annual Report on Historically Underutilized Businesses.

16 TAC §25.81. Service Quality Reports.

16 TAC §25.82. Fuel Cost and Use Information.

16 TAC §25.83. Transmission Construction Reports.

16 TAC §25.84. Annual Reporting of Affiliate Transactions for Electric Utilities.

16 TAC §25.85. Report of Workforce Diversity and Other Business Practices.

16 TAC §25.87. Distribution Unbundling Reports.

16 TAC §25.88. Retail Market Performance Measure Reporting.

16 TAC §25.89. Report of Loads and Resources.

16 TAC §25.90. Market Power Mitigation Plans.

16 TAC §25.91. Generating Capacity Reports.

16 TAC §25.93. Quarterly Wholesale Electricity Transaction Reports.

SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION.

16 TAC §25.101. Certification Criteria.

16 TAC §25.102. Coastal Management Program.

16 TAC §25.105. Registration and Reporting by Power Marketers.

16 TAC §25.107. Certification of Retail Electric Providers (REPs).

16 TAC §25.108. Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges.

16 TAC §25.109. Registration of Power Generation Companies and Self-Generators.

16 TAC §25.111. Registration of Aggregators.

16 TAC §25.113. Municipal Registration of Retail Electric Providers (REPs).

SUBCHAPTER F. METERING.

16 TAC §25.121. Meter Requirements.

16 TAC §25.122. Meter Records.

16 TAC §25.123. Meter Readings.

16 TAC §25.124. Meter Testing.

16 TAC §25.125. Adjustments Due to Meter Errors.

16 TAC §25.126. Meter Tampering.

16 TAC §25.127. Generating Station Meters, Instruments, and Records.

16 TAC §25.128. Interconnection Meters and Circuit Breakers.

16 TAC §25.129. Pulse Metering.

16 TAC §25.131. Load Profiling and Load Research.

SUBCHAPTER G. SUBMETERING.

16 TAC §25.141. Central System or Nonsubmetered Master Metered Utilities.

16 TAC §25.142. Submetering for Apartments, Condominiums, and Mobile Home Parks.

SUBCHAPTER H. ELECTRICAL PLANNING.

DIVISION 1. Renewable Energy Resources and Use of Natural Gas.

16 TAC §25.172. Goal for Natural Gas.

16 TAC §25.173. Goal for Renewable Energy.

DIVISION 2. Energy Efficiency and Customer-Owned Resources.

16 TAC §25.181. Energy Efficiency Goal.

16 TAC §25.182. Energy Efficiency Grant Program.

16 TAC §25.183. Reporting and Evaluation of Energy Efficiency Programs.

16 TAC §25.184. Energy Efficiency Implementation Project.

16 TAC §25.185. Energy Efficiency Incentive Program for Military Bases.

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION.

DIVISION 1. Open -Access Comparable Transmission Service for Electric Utilities in the Electric Reliability Council of Texas.

16 TAC §25.191. Transmission Service Requirements.

16 TAC §25.192. Transmission Service Rates.

16 TAC §25.193. Distribution Service Provider Transmission Cost Recovery Factors (TCRF).

16 TAC §25.195. Terms and Conditions for Transmission Service.

16 TAC §25.196. Standards of Conduct.

16 TAC §25.198. Initiating Transmission Service.

16 TAC §25.199. Transmission Planning, Licensing and Cost-Recovery for Utilities within the Electric Reliability Council of Texas.

16 TAC §25.200. Load Shedding, Curtailments, and Redispatch.

16 TAC §25.202. Commercial Terms for Transmission Service.

16 TAC §25.203. Alternative Dispute Resolution (ADR).

DIVISION 2. Transmission and Distribution Applicable to All Electric Utilities.

16 TAC §25.211. Interconnection of On-Site Distributed Generation (DG).

16 TAC §25.212. Technical Requirements for Interconnection and Parallel Operation of On-Site Distributed Generation.

16 TAC §25.214. Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities.

16 TAC §25.215. Terms and Conditions of Access by a Competitive Retailer to the Delivery System of a Municipally Owned Utility or Electric Cooperative that has Implemented Customer Choice.

16 TAC §25.221. Electric Cost Separation.

16 TAC §25.223. Unbundling of Energy Service.

16 TAC §25.227. Electric Utility Service for Public Retail Customers.

SUBCHAPTER J. COSTS, RATES AND TARIFFS.

DIVISION 1. Retail Rates.

16 TAC §25.231. Cost of Service.

16 TAC §25.232. Adjustment for House Bill 11, Acts of 72nd Legislature, First Called Special Session 1991.

16 TAC §25.233. Treatment of Integrated Resource Plan Costs.

16 TAC §25.234. Rate Design.

16 TAC §25.235. Fuel Costs - General.

16 TAC §25.236. Recovery of Fuel Costs.

16 TAC §25.237. Fuel Factors.

16 TAC §25.238. Power Cost Recovery Factors (PCRF).

16 TAC §25.240. Contribution Disclosure Statements in Appeals of Municipal Utility Rates.

16 TAC §25.241. Form and Filing of Tariffs.

16 TAC §25.242. Arrangements Between Qualifying Facilities and Electric Utilities.

16 TAC §25.251. Renewable Energy Tariff.

DIVISION 2. Recovery of Stranded Costs.

16 TAC §25.261. Stranded Cost Recovery of Environmental Cleanup Costs.

16 TAC §25.263. True-up Proceeding.

16 TAC §25.264. Quantification of Stranded Costs of Nuclear Generation Assets.

16 TAC §25.265. Securitization by River Authorities and Electric Cooperatives.

SUBCHAPTER K. RELATIONSHIPS WITH AFFILIATES.

16 TAC §25.271. Foreign Utility Company Ownership by Exempt Holding Companies.

16 TAC §25.272. Code of Conduct for Electric Utilities and Their Affiliates.

16 TAC §25.273. Contracts Between Electric Utilities and Their Competitive Affiliates.

16 TAC §25.275. Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities.

SUBCHAPTER L. NUCLEAR DECOMMISSIONING.

16 TAC §25.301. Nuclear Decommissioning Trusts.

16 TAC §25.303. Nuclear Decommissioning Following the Transfer of Texas Jurisdictional Nuclear Generating Plant Assets.

SUBCHAPTER M. COMPETITIVE METERING.

16 TAC §25.311. Competitive Metering Services.

SUBCHAPTER O. UNBUNDLING AND MARKET POWER.

DIVISION 1. Unbundling.

16 TAC §25.341. Definitions.

16 TAC §25.342. Electric Business Separation.

16 TAC §25.343. Competitive Energy Services.

16 TAC §25.344. Cost Separation Proceedings.

16 TAC §25.345. Recovery of Stranded Costs Through Competition Transition Charge (CTC).

16 TAC §25.346. Separation of Electric Utility Metering and Billing Service Costs and Activities.

DIVISION 2. Independent Organizations.

16 TAC §25.361. Electric Reliability Council of Texas (ERCOT).

16 TAC §25.362. Electric Reliability Council of Texas (ERCOT) Governance.

16 TAC §25.363. ERCOT Fees and Other Rates.

DIVISION 3. Capacity Auction.

16 TAC §25.381. Capacity Auctions.

DIVISION 4. Other Market Power Issues.

16 TAC §25.401. Share of Installed Generation Capacity.

DIVISION 5. Competition in Non-ERCOT Areas.

16 TAC §25.421. Transition to Competition for a Certain Area Outside the Electric Reliability Council of Texas Region.

SUBCHAPTER P. PILOT PROJECTS.

16 TAC §25.431. Retail Competition Pilot Projects.

SUBCHAPTER Q. SYSTEM BENEFIT FUND.

16 TAC §25.451. Administration of the System Benefit Account.

16 TAC §25.453. Targeted Energy Efficiency Programs.

16 TAC §25.454. Rate Reduction Program.

16 TAC §25.457. Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives.

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE.

16 TAC §25.471. General Provisions of Customer Protection Rules.

16 TAC §25.472. Privacy of Customer Information.

16 TAC §25.473. Non-English Language Requirements.

16 TAC §25.474. Selection of Retail Electric Provider.

16 TAC §25.475. Information Disclosures to Residential and Small Commercial Customers.

16 TAC §25.476. Labeling of Electricity with Respect to Fuel Mix and Environmental Impact.

16 TAC §25.477. Refusal of Electric Service.

16 TAC §25.478. Credit Requirements and Deposits.

16 TAC §25.479. Issuance and Format of Bills.

16 TAC §25.480. Bill Payment and Adjustments.

16 TAC §25.481. Unauthorized Charges.

16 TAC §25.482. Termination of Service.

16 TAC §25.483. Disconnection of Service.

16 TAC §25.484. Electric No-Call List.

16 TAC §25.485. Customer Access and Complaint Handling.

16 TAC §25.487. Obligations Related to Move-In Transactions.

16 TAC §25.488. Procedures for a Premise with No Service Agreement.

16 TAC §25.489. Treatment of Premises with No Retail Electric Provider of Record.

16 TAC §25.490. Moratorium on Disconnection on Move-Out.

16 TAC §25.491. Record Retention and Reporting Requirements.

16 TAC §25.492. Non-Compliance with Rules or Orders; Enforcement by the Commission.

16 TAC §25.493. Acquisition and Transfer of Customers from One Retail Electric Provider to Another.

16 TAC §25.495. Unauthorized Change of Retail Electric Provider.

16 TAC §25.497. Critical Care Customers.

SUBCHAPTER S. WHOLESALE MARKETS.

16 TAC §25.501. Wholesale Market Design for the Electric Reliability Council of Texas.

16 TAC §25.502. Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas.

16 TAC §25.503. Oversight of Wholesale Market Participants.

TRD-200503945

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 8, 2005

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §55.203(a)

Docket No.

IN THE MATTER OF
_____(OBLIGOR)

§
§
§

BEFORE THE IV-D AGENCY
OF THE
STATE OF TEXAS

NOTICE OF FILING OF PETITION TO SUSPEND LICENSE

TO: Obligor
Address

Type of License

License No.

Licensing Authority

1. A Petition to Suspend License has been filed. A copy is attached.
2. You have the right to a hearing before the Office of the Attorney General.
3. The deadline for requesting a hearing is no later than the 20th day after the date of service of this notice.
4. A Request for Hearing Form is provided.
5. Retain all these documents that were served. Keep them in the same order as they were when received. They will be used at the hearing. It is your responsibility to have every document with you at the time of the hearing.
6. AN ACTION TO SUSPEND ONE OR MORE LICENSES ISSUED TO YOU HAS BEEN FILED. YOU MAY EMPLOY AN ATTORNEY TO REPRESENT YOU IN THIS ACTION. IF YOU OR YOUR ATTORNEY DO NOT REQUEST A HEARING BEFORE THE 21ST DAY AFTER THE DATE OF SERVICE OF THIS NOTICE, AN ORDER OF LICENSE SUSPENSION MAY BE RENDERED.

This notice may be served by any sheriff or constable or other person authorized by law.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of the Office of the Attorney General, this the _____ day of _____, _____.

SEAL

Coordinator,
Office of the Attorney General
Child Support Division
P.O. Box 12017 MC 039-3
Austin, TX. 78711-2017
Phone (512) 460-6046
Fax (512) 460-6611

RETURN OF SERVICE

RE: Docket No.
IN THE MATTER OF _____(OBLIGOR)

PROCESS WAS RECEIVED ON THE ____ DAY OF _____ IN THE YEAR 20__ AT ____:____ O'CLOCK, __.M. AND

[☐] **SERVICE OBTAINED:** ON THE ____ DAY OF _____ IN THE YEAR 20__ AT ____:____ O'CLOCK __.M. AFTER I
WROTE THE DATE OF DELIVERY ON IT, I DELIVERED A TRUE COPY OF THIS *NOTICE OF FILING OF PETITION TO
SUSPEND LICENSE, PETITION TO SUSPEND LICENSE, AND REQUEST FOR HEARING*, PERSONALLY TO
AT _____, TEXAS.
(Street) (City) (County)

[☐] **NOT SERVED:** I WAS UNABLE TO SERVE PROCESS BECAUSE _____
[☐] **NO NEW LOCATION** WHERE PROCESS MAY BE SERVED WAS DISCOVERED.
[☐] **A NEW LOCATION** WHERE PROCESS POSSIBLY MAY BE SERVED IS: _____.

(Constable/Sheriff name)

Service Fee: \$ _____

By: _____
(Signature of Server)

_____ County, Texas

Non-Peace Officer Verification of Return

Before me, the undersigned notary public, on this ____ day of _____, in the year 20__, came affiant, _____
_____ who subscribed above after making oath as follows: *"I solemnly swear or affirm that all the above
statements are true, that I am over the age of 18, not a party, that I am disinterested in the outcome of this case,
and that I am authorized by court order to serve citations and other notices."*

(Signature of Notary)

Docket No.

IN THE MATTER OF	§	BEFORE THE IV-D AGENCY
_____ (OBLIGOR)	§	OF THE
	§	STATE OF TEXAS

PETITION TO SUSPEND LICENSE

- 1) The Office of the Attorney General files this Petition to Suspend License pursuant to Chapter 232 of the Texas Family Code.
- 2) The Title IV-D agency has jurisdiction to hear this petition.
- 3) (Name of Obligor), social security number (SS number, if available), of (address), has been ordered to pay child support. A copy of the support order is attached to this Petition as Exhibit A and is incorporated into this Petition for all purposes.

- 4) Obligor holds the following license or licenses issued by the respective licensing authorities:

<u>Type of License</u>	<u>License No.</u>	<u>Licensing Authority</u>
------------------------	--------------------	----------------------------

- 5) Obligor's child support obligation for a three month period is \$(insert amount).
- 6) Obligor's total child support arrearage owed under the support order is \$(insert amount), as of (insert date of calculation), calculated as follows:

Prior arrears as of (insert last judgment date)	\$(insert amount)
Support accrued since (insert last judgment date)	\$(insert amount)
Interest accrued since (insert last judgment date)	\$(insert amount)
Support paid since (insert last judgment date)	\$(insert amount)

Total arrearage as of (insert date of calculation)	\$(insert amount)
--	-------------------

- 7) Obligor entered into a voluntary or court ordered repayment schedule. See Exhibit B, repayment schedule, which is incorporated into this Petition for all purposes. Obligor is not in compliance with the repayment schedule.
- 8) See Exhibit C, Financial Activity Report, which is incorporated into this Petition for all purposes. Obligor owes overdue child support in an amount equal to or greater than the total support due for three months.

All statutory prerequisites having been established, pursuant to the authority of Chapter 232 of the Texas Family Code, Petitioner moves the Title IV-D agency to enter an order suspending the license issued to Obligor, as identified in this petition.

Respectfully Submitted,

(Petitioner)
(Including address, telephone and fax)

Docket No.

IN THE MATTER OF
_____(OBLIGOR)

§
§
§

BEFORE THE IV-D AGENCY
OF THE
STATE OF TEXAS

REQUEST FOR HEARING

This request for hearing form should be filed with the Coordinator, Office of the Attorney General, within 20 days after you were served with the petition to suspend license and should be completely filled out by you or your lawyer if you wish to have a hearing before a decision is made regarding the suspension of your license(s). If you request a hearing, any written proof you want to use at the hearing may be filed with this form but must be filed not later than 20 days before your hearing. Also, a copy of the request and any written proof should be sent to the Petitioner who signed the Petition to Suspend License. You will be notified of the date and time your hearing has been scheduled. If you do not complete and sign this form, an order suspending your license may be issued without sending you another notice.

NOTICIA IMPORTANTE:

Este es un documento importante que le avisa de sus derechos legales tocante su licencia(s). Si no habla ingles es importante que alguien le traduzca este documento.

(This is an important document which advises you of your legal rights regarding your license(s). If you do not speak English it is important that someone interpret this document for you.)

1. I have received the Petition to Suspend License and Notice of Filing of Petition to Suspend License in this case.
2. My name, address, telephone number and Social Security number, which I have listed below, are true and correct. I understand that if there are any changes I must immediately notify the Coordinator and all parties. I understand that my failure to supply those changes to the Coordinator may result in my failing to receive notices or other pleadings and documents.
3. I understand that:
 - a. a decision will be made by the agency after a hearing is held based on the testimony and evidence at the hearing;
 - b. I will receive written notice of the decision and the reasons for the decision; and
 - c. the Office of the Attorney General cannot represent me or give me legal advice; I have the right to hire my own lawyer to represent me at the hearing.
4. I hold the following licenses issued by the listed licensing authorities:

Type of License	License Number	Licensing Authority
_____	_____	_____
_____	_____	_____

5. I request a Hearing on the Petition to Suspend License for the following reason(s): (Check those that apply.)

_____ I owe less than the amount of child support due for three months under the court order. (Please explain and attach clear copies of receipts, canceled checks, affidavits of payment, or other written proof. Originals are not required).

_____ I am not the person who owes child support. (Please explain and attach proof.)

_____ I am in compliance with a previous agreed or court-ordered repayment schedule. (Please attach a copy of the repayment agreement or the court order, and proof of payments).

_____ Other. (Please explain and attach proof.)

6. Please read and check one of the following choices for your hearing:

_____ **IN PERSON** - I will be present for the in-person hearing set in this case. I understand that an in-person hearing is always held at the State Office of Administrative Hearings whose current address is 300 West 15th Street, Suite 502, Austin, Texas. Should the current address of the State Office of Administrative Hearings ever change, such new address will be stated in the Notice of Hearing. When the hearing date is set, the Coordinator will send the Notice of Hearing to the address I listed below.

OR

_____ **TELEPHONIC** - I request that the hearing on the Petition to Suspend License be conducted by telephone. I will be at the following telephone number for the telephone hearing: (_____) _____. I understand that if I am at a different phone number on the date of the hearing, it is my responsibility to notify the Coordinator of the number where I may be reached. I understand that an order suspending my license may be entered by default if I am not available for the telephonic hearing at the telephone number I have given the Coordinator.

7. I am sending the original of this Request for Hearing to the Coordinator for filing and a copy, including any documents I have provided, to the party or the attorney who signed the Petition. I am retaining all documents that were served on me and copies of all that I later provided. I am keeping these documents in the same order as they were when I received them or sent them to others. These will be used at the hearing. It is my responsibility to have every document with me at the time of the hearing.

**IF YOU ARE REPRESENTED BY A LAWYER, PLEASE FILL IN THE INFORMATION BELOW.
ALL NOTICES AND LETTERS WILL BE SENT TO YOUR LAWYER.**

Lawyer's Name

Address

Telephone Number

**MY SIGNATURE BELOW ACKNOWLEDGES THAT I HAVE READ THIS REQUEST FOR HEARING
AND THAT ALL THE RESPONSES ARE TRUE AND CORRECT.**

Signature

Date

Printed Name

Social Security Number

Address

Home Phone Number

City, State, Zip

Daytime Phone Number

This request for hearing must be returned to and filed with:

**Coordinator,
Office of the Attorney General
Child Support Division
P.O. Box 12017, Mail Code 039-3
Austin, Texas 78711-2017 (Postal Service delivery)**

or

**5500 E. Oltorf
Austin, Texas 78741 (hand delivery)
Telephone # (512) 460-6046 Fax # (512) 460-6611**

**A copy of this request and any written proof should also be delivered to the Petitioner who signed the
Petition to Suspend License.**

Docket No.

IN THE MATTER OF

_____(OBLIGOR)

§
§
§

BEFORE THE IV-D AGENCY

OF THE

STATE OF TEXAS

WAIVER OF SERVICE (LICENSE SUSPENSION)

"My name is (Name of Obligor) and my social security number is (SS number, if available). I am a party in case entitled IN THE MATTER OF (NAME OF OBLIGOR). My mailing address is:

(Address)

I acknowledge receipt of copies of the following documents in this cause:

1. Notice of Filing of Petition to Suspend License
2. Petition to Suspend License
3. Request for Hearing, and
4. Waiver of Service (License Suspension)

"I have read these documents and understand them. Pursuant to Texas Family Code Section 232.006(6) and Rule 119, Texas Rules of Civil Procedure, I hereby waive the issuance and service of process. I understand that this waiver has the same force and effect as if notice had been issued and served on me as provided by law."

Signed this _____ day of _____, _____.

(Name of Obligor)

State of Texas

County of _____

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public, by

_____, this _____ day of _____, 20____.



OFFICE *of the* ATTORNEY GENERAL

NOTIFICATION TO LICENSING AUTHORITY
ORDER SUSPENDING LICENSE

(LICENSING AUTHORITY)
(ADDRESS)

RE: (OBLIGOR); DOCKET NO. _____; LICENSE NO. _____

You are hereby notified that the Attorney General of Texas has issued an Order Suspending License which is attached to this Notification. Please take the actions necessary to immediately implement the suspension of the license specified. Thank you for your prompt attention to this matter.

SEAL

Coordinator

Issue Date: _____



OFFICE *of the* ATTORNEY GENERAL

NOTIFICATION TO LICENSING AUTHORITY
ORDER VACATING OR STAYING SUSPENSION OF LICENSE

(LICENSING AUTHORITY)
(ADDRESS)

RE: (OBLIGOR); DOCKET NO. _____; LICENSE NO. _____

You are hereby notified that the Attorney General of Texas has issued an Order Vacating or Staying a prior Order which suspended the license of the above-referenced licensee. Pursuant to the attached Order, the referenced individual is now eligible to receive any license issued by your agency for which they may otherwise be qualified. Please take the actions necessary to immediately implement the return of the license specified. Thank you for your prompt attention to this matter.

SEAL

Coordinator

Issue Date: _____

TEXAS STATE BOARD OF
PODIATRIC MEDICAL EXAMINERS



**180 – Day
License Limit**

**DO NOT WRITE IN
THIS SPACE**

Applicant #: _____

CC or MO: _____

Amount: _____

**EMERGENCY
APPLICATION FOR PROVISINAL LICENSE
(HURRICANE KATRINA REFUGEE EFFORT)**

Read all instructions prior to completing this application. All questions on this application must be answered, and all supporting documents must be submitted with this application per instructions. Please type or print neatly. When space provided is insufficient, attach additional sheets of paper.

1. My full name is _____
(First, middle and last name must be given in full, initials not acceptable)
2. Other Names you have used: _____
3. Mailing Address _____
(Give in full, City, County, State, Zip Code, and Country)
4. Telephone # _____ 5. E-mail Address: _____
6. Social Security # _____ - _____ - _____ 7. Date of Birth: _____ / _____ / _____
(See disclosure statement on Form P4)
8. Sex: ☐ Female ☐ Male
9. If you have ever held a Texas DPM license please list type and license #: _____

EDUCATION

10. List name and address of all colleges or universities attended other than schools where professional podiatry instruction was received.

Name	Address	Period of Attendance	
		From (Mo/Yr)	To (Mo/Yr)
		/	/
		/	/
		/	/
		/	/
		/	/
		/	/
		/	/

11. List names and address of all schools where professional podiatry instruction was received. Submit an original Certificate of Podiatric Medical Education (Form P7) and official transcripts from each school attended.

Name	Address	Period of Attendance	
		From (Mo/Yr)	To (Mo/Yr)
		/	/
		/	/

12. Doctor of Podiatric Medicine Degree granted by:

Name of Podiatric Medical School Address of School Exact Date of Issuance

P1

13. Have you taken the examinations administered by the National Board of Podiatric Medical Examiners (Part I, II, and III)? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, list part taken by location, date and result of examinations. Request certification of scores from examination agency (Forms P5 and P6).								
Examination	Location	Date	Result					
Part I								
Part II								
Part III (PMLexis)								
14. Have you completed, or are you currently participating in a residency program or fellowship approved by the Council of Podiatric Medical Education? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, provide information below and submit a Certificate of Completion.								
A. Name of Residency or Sponsoring Institution (please list all surgical & non-surgical)	City, State	Type of Residency					Dates Attended (or Date to Complete)	
		PSR 12	PSR 24 or more	Non PSR	PM&S 24	PM&S 36	From	To
B. Name of Fellowship or Sponsoring Institution	City, State	Type of Fellowship					Dates Attended (or Date to Complete)	
							From	To
15. Have you been licensed to practice podiatric medicine in any state or country? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, list state or country, license number, date issued and dates of practice in issuing agency's jurisdiction for each. Submit a Certificate by Licensing Agency from each state in which you are licensed or have been licensed (Form P8). Please use additional sheets of paper if necessary.								
State or Country	License Number	Date of Issuance	Dates of Practice in Issuing Agency's Jurisdiction					
			From: (mm/dd/yy)		To: (mm/dd/yy)			
			/ /		/ /			
			/ /		/ /			
			/ /		/ /			
IF THE ANSWER TO ANY OF THE QUESTIONS BELOW (#'s 16-26) IS "YES," YOU MUST SUBMIT A FULL AND COMPLETE EXPLANATION. INCLUDE CERTIFIED COPIES OF ALL APPLICABLE COURT RECORDS AND/OR OTHER LEGAL DOCUMENTS, INCLUDING ALL STATEMENTS OF DISPOSITION, RELIEF FROM DISABILITIES, CERTIFICATION OF CONDUCT OR OTHER DOCUMENTS.								
16. Has any disciplinary action ever been taken regarding any healing arts license which you now hold or have ever held? Include any disciplinary actions by the U.S. Military, U.S. Public Health Service or other U.S. federal governmental entity. <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, give details below or attach a separate sheet of paper if necessary:								
State	Date	Charge	Disposition					
17. Have you ever been denied a license, permission to practice podiatric medicine or any other healing arts, or permission to take an examination or failed an examination in any state, country, or U.S. federal jurisdiction? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, give details below or attach a separate sheet of paper if necessary:								
State or County	Date of Denial	Reason for Denial						

P2

APPLICANT'S AFFIDAVIT (To be acknowledged before a Notary Public)

I, _____, hereby certify under oath, that I am at least twenty-one years of age, and; that I am the person named in this application for a license to practice Podiatric Medicine in the State of Texas, and; that all statements herein are made as a basis of consideration for the Texas State Board of Podiatric Medical Examiners, to accept and consider as facts which concern my moral character, professional history and physical qualifications for the rights and privileges of a license to practice Podiatric Medicine in the State of Texas, all of which are true and correct. I am the person named in the Diploma (or photostatic copy thereof), presented to said Board for its inspection, and I am the legal and lawful owner of all credentials submitted to the Board. I voluntarily pledge to refrain from dishonest or fraudulent methods in taking the examination and to refrain from unethical, immoral or unprofessional conduct in my practice. I shall not by any method, or deceptive means make use of misrepresentations, misleading or untruthful statements to the public or my patients, or in my advertising, on my professional cards, stationary, directories or any other medium. I hereby agree, that the violation of this pledge, or any of the provisions of the Podiatric Medical Practice Act of Texas (Section 202.253 and Section 202.501), the Penal Code of Texas (penalty of perjury) shall constitute sufficient cause for the denial, suspension, cancellation or revocation of the license granted to me, and I hereby authorize and grant the Texas State Board of Podiatric Medical Examiners the withdrawal of all rights and privileges accrued to me thereunder.

I request that the Texas State Board of Podiatric Medical Examiners initiate a review of the records to determine my eligibility for examination or licensure in Texas. In making this request, I authorize the release of any information or records held by any individual or agency, relative to my training and qualifications as a Doctor of Podiatric Medicine upon request by the Board for use in evaluating my file.

Signature of Applicant _____

Subscribed and sworn before me, this the _____ day of _____, 20 _____.

If your state law requires additional language, please fill in that information in the space provided. **Notaries submitted on a separate page will be rejected.**

(NOTARY'S SEAL)

Notary Public, State of _____

My Commission Expires _____

Printed Name of Notary _____

NOTE: All items in this application are **mandatory**; none are voluntary. Failure to provide any of the requested information will result in the application being rejected as incomplete. The information provided will be used to determine qualification for licensure pursuant to Texas Occupations Code Section 202.252 which authorizes the collection of this information. Information regarding the issuance or denial of a license by the Board may be transmitted to any other podiatric or medical licensing authority or the National Practitioner Databank – HIPDB. Applicants must review their application to ensure accuracy to avoid processing delays.

Disclosure of your social security number is mandatory.

APPLICANT must paste recent photograph of self over the space allotted below.

For office use only.

GRADES MADE ON EXAMINATIONS

General Average _____

License Number _____

Date of Examination . _____, 20 ____

Issue Date _____, 20 ____

When completed mail this application to:

TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

Mailing Address: P.O. Box 12216, Austin, Texas 78711-2216

Physical Address: 333 Guadalupe, Suite 2-320, Austin, Texas 78701

PHONE: (512) 305-7000 • FAX: (512) 305-7003 • WEB: www.foot.state.tx.us

P4



**TEXAS STATE BOARD OF
PODIATRIC MEDICAL EXAMINERS**

PHYSICAL ADDRESS: 333 GUADALUPE 2-320; AUSTIN, TX 78701

MAILING ADDRESS: PO BOX 12216; AUSTIN, TX 78711-2216

PHONE: (512)305-7000 ♦ FAX: (512)305-7003

WEB: WWW.FOOT.STATE.TX.US



**VERIFICATION BY THE NATIONAL BOARD OF
PODIATRIC MEDICAL EXAMINERS
(PARTS I & II)**

TO BE COMPLETED BY APPLICANT: (Please type or print neatly.)

1. Name: (last) (first) (middle)	
2. Current Address: number and street/rural route (include apt. no., if any)	
City	State Zip Code
3. Date of birth: mm/dd/yy / /	4. Social Security Number: - -
5. Daytime Phone Number: Area Code: () -	6. Date DPM Degree Conferred: mm/dd/yy / /

Note to applicant: Send this form with a check in the amount of \$35.00 to:

**THOMAS PROMETRIC
2000 LENOX DRIVE, 3RD FLOOR
LAWRENCEVILLE, NEW JERSEY 08648
(877) 302-8952**

To Be Completed By National Board of Podiatric Medical Examiners:

Please provide signed score reports with seal imprints on the above-noted applicant to the Texas State Board of Podiatric Medical Examiners. Please staple this Form **P5** to the score reports and mail the items directly to:

**TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS
P.O. BOX 12216
AUSTIN, TEXAS 78711-2216**

P5



**TEXAS STATE BOARD OF
PODIATRIC MEDICAL EXAMINERS**
PHYSICAL ADDRESS: 333 GUADALUPE 2-320; AUSTIN, TX 78701
MAILING ADDRESS: PO BOX 12216; AUSTIN, TX 78711-2216
PHONE: (512)305-7000 ♦ FAX: (512)305-7003
WEB: WWW.FOOT.STATE.TX.US



REQUEST FOR PART III (PMLexis) CERTIFIED SCORE REPORT

INSTRUCTIONS: Applicants for licensure who need to have Part III (PMLexis) scores certified to another state license board may, by completing this form and including a check in the amount of \$45 payable to FPMB, request that the Federation of Podiatric Medical Boards certify the score. A separate \$45 fee is required for each additional state board receiving the certified score report. To order by credit card online you may go into the FPMB web site at www.fpmb.org

Send this form and payment by regular mail (do not send certified or express mail) to:

**Federation of Podiatric Medical Boards
6551 Malta Drive
Boynton Beach, FL 33437
Phone: (561) 752-3735**

Name:	
Address: (Where you can be reached) Number and Street	
City	State Zip Code
Social Security Number: — — —	Date of birth: mm/dd/yy / /
State where Part III (PMLexis) was taken:	Date (mm/yy) Part III (PMLexis) was taken:
Daytime Phone Number:	
Area Code: () Number:	

Please send certified scores to:

**Texas State Board of Podiatric Medical Examiners
P.O. Box 12216
Austin, Texas 78711-2216**

P6



**TEXAS STATE BOARD OF
PODIATRIC MEDICAL EXAMINERS**

PHYSICAL ADDRESS: 333 GUADALUPE 2-320; AUSTIN, TX 78701

MAILING ADDRESS: PO BOX 12216; AUSTIN, TX 78711-2216

PHONE: (512)305-7000 ♦ FAX: (512)305-7003

WEB: WWW.FOOT.STATE.TX.US



REQUEST FOR DEAN LETTER

TO APPLICANT: Complete this section and submit this form to the Podiatry School you graduated from.
THIS FORM WILL NOT BE ACCEPTED IF RETURNED BY THE APPLICANT

Name of Institution

I am applying for licensure as a Doctor of Podiatric Medicine in the State of Texas. Please provide the following information, with my permission, to the Texas State Board of Podiatric Medical Examiners. This information needs to be sent directly to the Board at the address listed at the top of this form.

Student Name

Former Name, if different at time of attendance

Social Security #

Date of Birth

Signature

Date

TO DEAN OR PROGRAM DIRECTOR: To avoid delay to applicant, please complete all sections below and send this form directly to the Board at the above address as soon as possible. Thank you.

1. Beginning & ending dates of attendance in this program:

From _____ / _____ / _____ To _____ / _____ / _____
Month Day Year Month Day Year

2. Date that Degree was conferred:

_____ / _____ / _____
Month Day Year

3. Was the applicant ever restricted, suspended, terminated, or requested to resign from participation in the program?

☐ Yes ☐ No (If YES, please provide details on a separate sheet)

I do hereby certify that, at the time of graduation, there was no suspension, probation or other disciplinary action in effect or pending involving this graduate, and to the best of my knowledge he/she was competent to practice podiatric medicine.

Name of School Official completing this form (PLEASE PRINT)

Date

Signature of School Official completing this form

(SEAL)

Phone Number

Title

P7



**TEXAS STATE BOARD OF
PODIATRIC MEDICAL EXAMINERS**
PHYSICAL ADDRESS: 333 GUADALUPE 2-320; AUSTIN, TX 78701
MAILING ADDRESS: PO BOX 12216; AUSTIN, TX 78711-2216
PHONE: (512)305-7000 ♦ FAX: (512)305-7003
WEB: WWW.FOOT.STATE.TX.US



CERTIFICATE BY LICENSING AGENCY

TO BE COMPLETED BY APPLICANT: (Please type or print neatly.)

1. Name: (last) (first) (middle)			
2. Address: Number and street/rural route (include apt. no., if any)			
City	State	Zip Code	Country
3. Date of birth: mm/dd/yy / /		4. State Licensing Agency	

TO BE COMPLETED BY STATE LICENSING AGENCY:

I certify that _____ who graduated from
Name of Applicant
_____ on _____ was granted license number _____
Name of Podiatric Medical School Date of Graduation
on _____ on the basis of _____
Date of License Issued National Board Exam, Licensing Agency Exam, Other

NOTE: If the license was issued by written examination, complete the following certification; otherwise write across the following certification the words: *Issued on Credentials*.

I further certify that this doctor passed the REGULAR WRITTEN EXAMINATION given by this Board on _____, and obtained a general average of _____ percent in the following subjects:
Date

Subjects of Examination	Percent	Subjects of Examination	Percent

I certify that this license is valid, current, has never been suspended or revoked, and will expire on _____; and that records in this office indicate that there are not now nor have there ever been any charges filed against the holder of this license. If licensee has been disciplined, please provide copies/explanation of Board action.

Note: If any portion of the above certification is deleted or modified, please attach an explanation.

Type or Print Name and Title of Agency Official

Signature of Agency Official

Date

{Affix Seal}

Name of State Licensing Agency

Address

Phone Number

P8

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Proposed Multifamily Bond Program Guidelines

The Texas State Affordable Housing Corporation (Corporation) proposes amendments to its Multifamily Private Activity Bond Program Guidelines (Guidelines). The Corporation issues tax-exempt private activity bonds to finance multifamily affordable housing in the state of Texas under the authority granted to it under Government Code, Title 10, Chapter 2306, Subchapter Y.

Written comments on the proposal may be sent to Katherine Clossmann, Executive Vice President, 1005 Congress Avenue, Suite 500, Austin, Texas 78701. For further information, please contact Ms. Clossmann at (512) 477-3555. The proposed amended Guidelines may be viewed in whole and in blackline format on the Corporation's website at www.tsahc.org. Comments will be accepted through October 6, 2005.

TRD-200504022

David Long

President

Texas State Affordable Housing Corporation

Filed: September 13, 2005

Texas Department of Agriculture

Notice of Extension of Comment Period

The Texas Department of Agriculture is extending the period for the submission of public comments on its proposed amendments to Chapter 7, concerning pesticide regulation and registration, as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4547). The comment period is extended to September 26, 2005, and comments must be received by that date. Comments may be submitted to Jimmy Bush, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

Any questions regarding this extension should be directed to Mr. Bush at the address provided or by calling (512) 475-1626.

TRD-200504057

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Filed: September 14, 2005

Office of the Attorney General

Notice of Determination

Section 2.16 of House Bill 2702 enacted by the 79th Texas Legislature amended Subchapter B, Chapter 222, of the Texas Transportation Code by adding §222.035, which partly provides that, if the Attorney General makes a determination that the United States Congress has enacted legislation amending the Internal Revenue Code of 1986 to include highway facilities or surface freight transfer facilities among the

types of facilities for which private activity bonds may be used, the determination shall be published in the *Texas Register*.

Accordingly, notice is hereby given that the Attorney General has determined that the United States Congress has enacted legislation amending §142 of the Internal Revenue Code to include "qualified highway or surface freight transfer facilities" among the types of facilities for which private activity bonds may be used. ***Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, Title XI, Subtitle C, §11143 (2005).***

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200504071

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: September 14, 2005

Texas Health and Safety Code, Texas Water Code and Texas Clean Air Act Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: ***Harris County, Texas and the State of Texas v. James Ward d/b/a Excalibur Construction, Ltd. And Michael J. Ward d/b/a Excalibur Construction, Ltd., Cause No. 2004-05832, in the 165th Judicial District Court of Harris County, Texas.***

Nature of Defendant's Operations: Harris County filed suit against Excalibur Construction, Ltd. alleging that Defendant violated the Texas Clean Air Act by improperly burning land clearing debris. On several occasions, Defendants used trench burners to burn the land clearing debris to avoid the expense of bring the debris to a landfill which this operation was in violation of the law.

Proposed Agreed Judgment: The Agreed Permanent Injunction and Final Judgment is in favor of Harris County, Texas and the State of Texas, consisting of civil penalties in the amount of Thirty Five Thousand Forty Dollars (\$35,040.00) and Two Thousand Five Hundred Dollars (\$2,500.00) attorney's fees, allocated as follows: Seventeen Thousand Five Hundred Twenty Dollars (\$17,520.00) to Harris County, Texas and Seventeen Thousand Five Hundred Twenty Dollars (\$17,520.00) to the State of Texas for civil penalties; One Thousand Five Hundred Dollars (\$1,500.00) to Harris County, Texas, and One Thousand Dollars (\$1,000.00) to the State of Texas for attorney's fees. In addition, the Agreed Permanent Injunction and Final Judgment imposes a civil

penalty of \$14,960.00, that is deferred and waived if all terms of the Judgment are satisfied.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200504047

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: September 13, 2005

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of September 2, 2005, through September 8, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on September 14, 2005. The public comment period for these projects will close at 5:00 p.m. on October 14, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Port of Corpus Christi Authority; Location: The project is located in Corpus Christi Bay at the junction of the Corpus Christi Ship Channel (CCSC) and La Quinta Channel near CCSC Corps of Engineers (CE) Station 540+00 and La Quinta Channel CE Station 40+00. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 675500; Northing: 3077250. Project Description: The applicant proposes to hydraulically dredge 20 acres of submerged bay bottom from their current depth of -16 to -18 feet mean low tide (MLT) to a depth of -45 feet MLT plus -2 feet advanced maintenance plus -2 feet allowable overdepth. Approximately 1,040,000 cubic yards of material would be dredged during the project and the material would be placed into the Port of Corpus Christi Authority's Dredged Material Placement Areas (DMPA's) 10 and 13. A 10-year extension of time is also requested to conduct maintenance dredging. Approximately 20,000 cubic yards of material are expected to be removed annually during maintenance operations and placed into DMPA's 10 and 13. The purpose of the project is to improve navigation for ships to both enter and leave the La Quinta Channel to and from the CCSC.

CCC Project No.: 05-0449-F1; Type of Application: U.S.A.C.E. permit application #23920 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200504025

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: September 13, 2005

Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period September 2005, as required by Tax Code, §202.058, is \$55.34 per barrel for the three-month period beginning on June 1, 2005, and ending August 31, 2005. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of September 2005, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period September 2005, as required by Tax Code, §201.059, is \$6.95 per mcf for the three-month period beginning on June 1, 2005, and ending August 31, 2005. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of September 2005, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200503997

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Filed: September 12, 2005

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/19/05 - 09/25/05 is 18% for Consumer ¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/19/05 - 09/25/05 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment, or other similar purpose.

TRD-200504023

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: September 13, 2005

East Texas Council of Governments

Soliciting Proposals to Facilitate a Strategic Planning Process for the East Texas Workforce Development Area

The East Texas Council of Governments (ETCOG), as administrative unit for the East Texas Workforce Development Board (Board), is soliciting proposals to facilitate a strategic planning process for the East Texas Workforce Development Area (WDA).

Counties that comprise the East Texas WDA are Anderson, Camp, Cherokee, Gregg, Harrison, Henderson, Marion, Panola, Rains, Rusk, Smith, Upshur, Van Zandt, and Wood.

The Actionable Plan will assist the Board in evaluating the employment and training needs of its constituency; developing its annual plan; and guiding the East Texas Workforce Centers, area educational institutions and job training providers in East Texas. The Actionable Plan will build on previous planning work, incorporating a summary of information regarding the East Texas economy, population, education system, workforce development system, economic development activities, employer needs, transportation system, childcare system, and related topics that have an impact on workforce development. The plan will focus on gaps between skills needed and the workforce's capacity and solutions to improve the areas of concern. The plan will also detail actions and steps that can be taken to improve the relationships and communication between the Board members, Board staff and Workforce Center staff with area employers.

Requests for Proposals will not be released prior to September 8, 2005. The anticipated deadline for receipt of proposals will be October 7, 2005.

Persons or organizations wanting to receive a Request for Proposals (RFP) package should request by letter, E-mail or by fax. Request letters should be addressed to Paul Macaluso, Regional Planner, Workforce Development Programs, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662 or E-mail to paul.macaluso@twc.state.tx.us or fax at (903) 983-1440, Attention: Paul Macaluso.

Questions concerning the RFP process should be addressed by E-mail or fax to Gary Allen, Section Chief, Planning and Board Support or Paul Macaluso, Regional Planner at gary.allen@twc.state.tx.us or paul.macaluso@twc.state.tx.us or fax at (903) 983-1440.

TRD-200503982

Glynn Knight

Executive Director

East Texas Council of Governments

Filed: September 9, 2005

Texas Commission on Environmental Quality

Notice of Water Quality Applications

The following notices were issued during the period of September 6, 2005 through September 8, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711- 3087, **WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.**

CITY PUBLIC SERVICE OF SAN ANTONIO which operates the O.W. Sommers/J.T.Deely/J.K. Spruce Steam Electric Station, has applied for a major amendment to TPDES Permit No. WQ0001514000 to authorize a change in the sampling location for Outfall 002; a change in monitoring parameters and frequency at Outfalls 006, 712 and 713; the addition of metal cleaning waste at Outfalls 101, 102, 103 and 109; the addition of the use of chlorination at Outfall 103; an increase in the maximum pH from 9.0 s.u. to 10.0 s.u at Outfalls 103, 110, 111 and 712; the addition of construction storm water at Outfall 111 and 712; sampling during normal business hours at Outfall 113; use of algacide at Outfalls 109 and 104; increase average daily flow at Outfall 110 from 20,000 to 40,000 gallons per day and maximum daily flow from 40,000 to 80,000 gallons per day; and include an additional overflow monitoring location at Outfall 103. The current permit authorizes the discharge of once-through cooling water and previously monitored effluents (PME) from Sommers Units 1 & 2 and from Deely Units 1 & 2 at a daily average flow of 1,440,000,000 gallons per day via Outfall 001; low volume waste on a flow variable basis via Outfalls 101 and 102; ash transport water and other low volume waste on an intermittent and flow variable basis via Outfall 103; coal pile runoff on an intermittent and flow variable basis via Outfall 104; low volume waste and/or metal cleaning waste on an intermittent and flow variable basis via Outfalls 108, 112, and 002; discharge from a pond containing storm water from material storage areas and flue gas desulfurization (FGD) scrubber sludge on a flow variable basis via Outfall 109; treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day via Outfall 110; storm water from plant yard drains on an intermittent and flow variable basis via Outfall 111; storm water on an intermittent and flow variable basis via Outfalls 113, 115, 116, 117, 118, and 014; storm water from diked storage areas on an intermittent and flow variable basis via Outfall 006; once-through cooling water from Spruce Unit 1 at a daily average flow not to exceed 1,000,000,000 gallons per day via Outfall 007; storm water and wastewater from fire booster pumps on an intermittent and flow variable basis via Outfall 712; and from a pond containing storm water runoff (sludge/fly ash disposal area and landfill area) on an intermittent and flow variable basis via Outfall 713. The facility is located adjacent to Calaveras Lake at 9599 Gardner Road, and east-southeast of the City of San Antonio, Bexar County, Texas.

FARCO MINING, INC. which operates the Trevino Mine, a surface coal mine operation, has applied for a renewal of TPDES Permit No. WQ0004162000, which authorizes the discharge from retention ponds in the "active mining area" on an intermittent and flow variable basis via Outfall 001, and the discharge from the retention ponds in the "post mining area" on an intermittent and flow variable basis via Outfall 101. The facility is located on the west side of Farm-to-Market Road 1472, 40 miles northwest of the City of Laredo, Webb County, Texas.

CITY OF GAINESVILLE has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010726002, to authorize the discharge of treated water treatment plant clarifier backwash, filter backwash, and filter to waste water at a daily average flow not to exceed 50,000 gallons per day. The existing water treatment plant is located at 209 North Lake Lane,

approximately two miles northwest of the intersection of Interstate Highway 35 and Farm-to-Market Road 1202 outside the Gainesville city limits in Cooke County, Texas.

CITY OF GROOM has applied for a renewal of Permit No. 10093-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 84,000 gallons per day via surface irrigation of 78.6 acres of non-public access pastureland and evaporation on 85-acre playa lake. The facility and disposal site are located southeast of the intersection of Interstate Highway 40 and Farm-to-Market Road 295 and north of the City of Groom in Carson County, Texas.

HOOKS INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 13634-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,500 gallons per day. The facility is located on the east side of Farm-to-Market Road 560, approximately three (3) miles north of Interstate Highway 30 in Bowie County, Texas.

LAS VENTANAS LAND PARTNERS, LTD. has applied for a new permit, Proposed Permit No. WQ0014534001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 630,000 gallons per day via surface irrigation of 262 acres of nonpublic access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site will be located approximately three miles west of the intersection of Ranch-to-Market Road 620 and Lakeway Boulevard in Travis County, Texas.

NORTH LAMAR INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 11932-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 7,600 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on the grounds of Powderly Elementary School, adjacent to and east of U.S. Highway 271 approximately 1,000 feet north of the intersection of U.S. Highway 271 and Farm-to-Market Road 3298 in Lamar County, Texas.

RED RIVER AUTHORITY OF TEXAS has applied for a renewal of TPDES Permit No. 11445-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located on Arrowhead Ranch Estates property, approximately 2,300 feet east of Farm-to-Market Road 1954 and 5.4 miles southeast of the intersection of U.S. Highway 281 and Farm-to-Market Road 1954 in Clay County, Texas.

TEJAS INDUSTRIES, LTD. which operates a rendering, pet food/pet treat production facility, a rawhide production and hide curing facility and a rendering application, has applied for a renewal of Permit No. WQ0001300000, which authorizes the disposal of process wastewater and domestic wastewater at a daily average flow not to exceed 350,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and disposal site are located approximately 3.5 miles southwest of the City of Hereford on Highway 60, 4.2 miles southwest of the intersection of Highway 385 and Highway 60, and 3.5 miles northeast of the intersection of Farm to Market Road 1057 and Highway 60, Deaf Smith County, Texas.

UA HOLDINGS 1994-5, L.P. has applied for a renewal of TPDES Permit No. 12233-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located at 8550 Memorial Drive in the City of Houston in Harris County, Texas.

THE CITY OF WHITESBORO has applied for a renewal of TPDES Permit No. WQ0010464001, which authorizes the discharge of treated

domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located on Mineral Creek, approximately 1,000 feet east of U.S. Highway 377 and approximately 0.8 mile north of the intersection of U.S. Highway 82 and 377 in the City of Whitesboro in Grayson County, Texas.

CITY OF WINNSBORO has applied for a major amendment to TPDES Permit No. 10319-002 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,120,000 gallons per day to an annual average flow not to exceed 1,500,000 gallons per day. The facility is located one mile south of Winnsboro, approximately 1,900 feet east of Old State Highway 37 and 1,400 feet west of Farm-to-Market Road 312 in Wood County, Texas.

TRD-200504067

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 14, 2005



Notice of Water Rights Application

Notices mailed August 31, 2005.

APPLICATION NO. 5850; TXU Mining Company LP (TXU or Applicant), 1601 Bryan Street, Dallas, Texas 75201-3411, applicant, seeks a Water Use Permit pursuant to Texas Water Code 11.121 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code 295.1, et seq. Published and mailed notice of the application is being given to all water right holders of record in the Cypress Basin pursuant to 30 TAC 295.151. Applicant seeks authorization to divert and use not to exceed 50 acre-feet of water per year within the Tankersley Creek and Hart Creek watersheds for lignite surface mining (dust suppression and other mining activities) purposes in the Monticello Lignite Mining Area (LMA) in Titus County, Texas. The Tankersley Creek watershed includes Dragoo Creek, several unnamed tributaries of Tankersley Creek, and Tankersley Creek. The Hart Creek watershed includes an unnamed tributary of Hart Creek, Hayes Creek, and Hart Creek. Tankersley Creek and Hart Creek are both tributaries of Big Cypress Creek in the Cypress Basin. The water will be diverted from multiple diversion points located in the watersheds within the boundary of the lignite mine property upstream of thirteen (13) proposed diversion points. The combined diversion rate will not exceed 13.4 cubic-feet-per-second (6,000 gallons-per-minute). The proposed diversion points are located in the Joseph Leech Survey, Abstract No. A-337, approximately three to five miles northwest of Mount Pleasant in Titus County. Applicant also seeks authorization to maintain seven existing reservoirs impounding a combined total of 2,771 acre-feet of water for domestic and livestock purposes after the cessation of mining activity in the year 2014. The seven on-channel reservoirs are located approximately three to five miles northwest of Mount Pleasant in Titus County. For a listing of the diversion points and the on-channel reservoirs, view the complete notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. Approximately 250 acre-feet of groundwater per year through the year 2006 and 50 acre-feet of water per year through the year 2010 will be obtained from de-watering activities during mining operations. This water will be discharged throughout the Tankersley Creek/Hart Creek watersheds. After the year 2010 and through the remaining life of the mine, no dewatering activities will occur and no groundwater will be produced. Ownership of the mining rights in TXU Mining Company LP's Monticello LMA is held under multiple mining leases as evidenced by warranty deeds and leases filed in the application filed with the Texas Railroad Commission and in the Deed Records

of Titus County, Texas. The Commission will review the application as submitted by the applicant(s) and may or may not grant the application as requested. The application and required fees were received on June 5, 2004. The application was declared administratively complete and filed with the Office of the Chief Clerk on December 31, 2004. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5866; Harris County Flood Control District, 9900 Northwest Freeway, Houston, Texas, 77092, applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to 11.121, Texas Water Code, and TCEQ Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Applicant seeks a water use permit to construct an on-channel detention basin (consisting of an east and west basin) on Armand Bayou, tributary of Clear Creek, tributary of Galveston Bay, San Jacinto-Brazos Coastal Basin, with a normal capacity of 108.9 acre-feet of water with a surface area of 26.5 acres and a flood capacity of approximately 255.0 acre-feet of water for flood control, wetland, and water quality purposes in Harris County. The water will be diverted at a maximum rate of 1,323 cfs (593,762 gpm) from each diversion point. Station 0.00 on the centerline of the stream is 57.2130 NW, 4,953 feet from the southeast corner of the Reynolds Survey, being at Latitude 29.6510 N, Longitude 95.1290 W. The detention basin is approximately 15.3 miles in a southeast direction from the City of Houston, Harris County, Texas, and approximately 4.7 miles in a southeast direction from City of Pasadena, and has been designed to divert flow from Armand Bayou when the elevation in the bayou exceeds a threshold elevation established by the low flow pipes (14 foot elevation) and the minimum weir elevation (20 foot elevation). No diversion of runoff will occur during normal flow conditions. As the water level in the bayou rises during rainfall events, flow will be diverted into the detention basin for flood control purposes. The inflow point from Armand Bayou to the East Basin is located at Latitude 29.6539 N, Longitude 95.1333 W, bearing 57.213 NW, 8,953 feet from the southeast corner of the Fabricus Reynolds Original Survey, Abstract No. 643.). The return flow point from the East Basin to Armand Bayou is at Latitude 29.6510 N, Longitude 95.1296 W. The inflow point from Armand Bayou to the West Basin is located at Latitude 29.6536 N, Longitude 95.1336 W, bearing 57.213 NW, 8,953 feet from the Southeast corner of the Reynolds Survey. The return flow point from the West Basin to Armand Bayou is at Latitude 29.6509 N, Longitude 95.1299 W. Ownership of the inundated land is filed by the Harris County Clerk's Office and evidenced by a General Warranty Deed, Volume 519-10, Pages 2946 through 1949 and Page 2957, and a Special Warranty Deed, Volume 550-17, Pages 0226 through 0228. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The Commission may grant this application for any beneficial use authorized by law. The application was received on October 8, 2004. Additional information and fees were received on February 17, March 14, June 3, and July 20, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on June 29, 2005. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200504066

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 14, 2005

General Land Office

Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey, Refugio County Art. 33.136 Sketch No. 3, submitted by Michael Haas, a Licensed State Land Surveyor, conducted in May 2005, locating the following shoreline boundary:

Plat showing a survey of the 1.5 ft. contour along the northeast line of a 408.08 acre tract of land and the southwest line of Hynes Bay out of the James Collyer survey, Abstract 13 and the J Reynolds survey, Abstract 261.

For a copy of this survey contact Archives & Records, Texas General Land Office at 512-463-5277.

TRD-200504072

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: September 14, 2005

Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Dallas	Maxum Health Services Corp DBA Insight Diagnostic Center	L05904	Dallas	00	08/10/05
Dallas	Heart Consultants of North Texas	L05898	Dallas	00	08/10/05
Fort Worth	Bell Helicopter Textron Inc	L05929	Fort Worth	00	08/11/05
Houston	Welbor Technology Inc	L05925	Houston	00	08/24/05
Pasadena	Cardiac Medical Solutions DBA Heartscan of Pasadena	L05905	Pasadena	00	08/11/05
Plano	3T Diagnostic Imaging Center LTD	L05924	Plano	00	08/26/05
Port Arthur	BASF Fina Petrochemicals LP	L05914	Port Arthur	00	08/24/05
San Antonio	Jeremy Nyle Wiersig MD PA DBA Concord Imaging	L05915	San Antonio	00	08/12/05
Throughout Tx	National Inspection Services LLC	L05930	Crowley	00	08/22/05
Yoakum	Yoakum Community Hospital	L05913	Yoakum	00	08/16/05

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Alice	Christus Spohn Health System Corporation DBA Christus Spohn Hospital Alice	L02390	Alice	37	08/17/05
Amarillo	Amarillo Diagnostic Clinic	L04085	Amarillo	21	08/16/05
Arlington	Healthsouth Diagnostic Centers of Texas LP DBA Healthsouth Diagnostic Center of Arlington	L05033	Arlington	20	08/17/05
Arlington	Arlington Memorial Hospital	L02217	Arlington	83	08/25/05
Austin	Seton Medical Center	L02896	Austin	83	08/19/05
Beaumont	Applied Standards Inspection Inc	L03072	Beaumont	90	08/10/05
Bedford	Dallas Cardiology Associates PA DBA Heart Place West	L05448	Bedford	12	08/26/05
Carrollton	Medical Edge Healthcare Group Pa DBA Heart First	L05555	Carrollton	05	08/11/05
Corpus Christi	Mestena Uranium LLC	L05360	Corpus Christi	06	08/05/05
Dallas	Tenet Health System Hospitals Dallas Inc DBA RHD Memorial Medical Center	L02314	Dallas	49	08/10/05
Eules	Cor Specialty Associates of North Texas	L05062	Eules	18	08/18/05
Fort Worth	Maxum Health Services Corporation DBA Insight Diagnostic Center Eighth Ave	L05887	Fort Worth	01	08/18/05
Fort Worth	Fort Worth Heart PA	L05480	Fort Worth	15	08/10/05
Granbury	Granbury Hospital Corporation DBA Lake Granbury Medical	L02903	Granbury	26	08/23/05
Grapevine	Baylor Medical Center at Grapevine	L03320	Grapevine	22	08/17/05
Grapevine	Numed Imaging Centers Inc	L05016	Grapevine	15	08/15/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	AITEC USA Inc	L05718	Houston	11	08/19/05
Houston	Nuclear Imaging Services LLC	L05791	Houston	01	08/10/05
Houston	University of Texas MD Anderson Cancer Ctr	L00466	Houston	97	08/16/05
Houston	Cardiology Center of Houston PA	L05400	Houston	03	08/11/05
Houston	Cardinal Health	L05536	Houston	15	08/22/05
Houston	Tanox Inc	L04094	Houston	10	08/29/05
Humble	Goolsby Testing Laboratories Inc	L03115	Humble	76	08/23/05
Katy	St Catherine Health and Wellness Center	L05310	Katy	08	08/19/05
La Porte	Innovene USA LLC DBA Innovene Polyethylene North America	L00088	La Porte	50	08/04/05
La Porte	Innovene USA LLC DBA Innovene Polyethylene North America	L00088	La Porte	51	08/29/05
Lewisville	Texas Oncology PA DBA Lake Vista Cancer Center	L05526	Lewisville	09	08/10/05
Longview	Eastman Chemicals Company	L00301	Longview	100	08/24/05
Lubbock	Cardiologist of Lubbock PA	L05038	Lubbock	16	08/18/05
Lubbock	Covenant Health System DBA Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	34	08/10/05
Lubbock	University Medical Center	L04719	Lubbock	81	08/16/05
Lufkin	Piney Woods Healthcare System DBA Woodland Heights Medical Center	L01842	Lufkin	49	08/24/05
Orange	Chevron Phillips Chemical Company LP	L00031	Orange	53	08/22/05
Pampa	Laxmichand Kamnani DBA Pampa Heart Clinic	L05273	Pampa	02	08/18/05
Pasadena	Premier Heart Specialists PA	L05750	Pasadena	03	08/18/05
Plano	Physician Reliance Network Inc DBA Texas Oncology Plano West Cancer Ctr	L05896	Plano	01	08/26/05
Plano	Presbyterian Hospital of Plano	L04467	Plano	33	08/29/05
Plano	Texas Regional Heart Center PA DBA Legacy Heart Center	L03704	Plano	27	08/25/05
Port Arthur	The Medical Center of Southeast Texas LP	L01707	Port Arthur	59	08/12/05
Round Rock	Columbia/St Davids Healthcare System LP DBA Medical Center of Round Rock	L03469	Round Rock	39	08/19/05
San Antonio	Southwest Research Institute	L00775	San Antonio	72	08/19/05
San Antonio	Southwest Foundation for Biomedical Research	L00468	San Antonio	45	08/11/05
San Antonio	Cardiovascular Associates of San Antonio PA	L04996	San Antonio	10	08/10/05
San Antonio	Alamo Heart Associates PA	L04909	San Antonio	05	08/11/05
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	137	08/25/05
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	207	08/22/05
Sugar Land	Stillmeadow Inc	L04497	Sugar Land	12	08/10/05
Texarkana	J M Hurley MD PA DBA Texarkana Cardiology Associates	L04738	Texarkana	08	08/25/05
Throughout Tx	Radiation Technology Inc	L04633	Austin	20	08/05/05
Throughout Tx	The University of Texas at Austin	L00485	Austin	70	08/24/05
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	35	08/15/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Throughout Tx	ConocoPhillips Company DBA Borger Refinery and NGL Center	L02480	Borger	41	08/17/05
Throughout Tx	ConocoPhillips Company DBA Borger Refinery and NGL Center	L02480	Borger	42	08/24/05
Throughout Tx	Alliance Imaging Inc	L05336	Dallas	08	08/15/05
Throughout Tx	Fugro South Inc	L03461	Dallas	23	08/17/05
Throughout Tx	Rone Engineering Services LTD	L02356	Dallas	28	08/26/05
Throughout Tx	Lockheed Martin Corporation DBA Lockheed Martin Aeronautics Company	L05633	Fort Worth	03	08/26/05
Throughout Tx	The Dow Chemical Company	L00451	Freeport	78	8/29/05
Throughout Tx	Atser Corporation	L04741	Houston	23	08/11/05
Throughout Tx	Component Sales and Service Inc	L02243	Houston	22	08/11/05
Throughout Tx	Metco	L03018	Houston	153	08/19/05
Throughout Tx	AITEC USA Inc	L05718	Houston	12	08/26/05
Throughout Tx	Metco	L03018	Houston	154	08/26/05
Throughout Tx	H & G Inspection Company Inc ADBA Statewide Maintenance Company	L02181	Houston	201	08/19/05
Throughout Tx	Southern Services Inc DBA Southern Technical Services DBA Bix Testing Laboratories	L05270	Lake Jackson	40	08/17/05
Throughout Tx	Southern Services Inc DBA Southern Technical Services DBA Bix Testing Laboratories	L05270	Lake Jackson	41	08/23/05
Throughout Tx	High Tech Testing Service Inc	L05021	Longview	52	08/10/05
Throughout Tx	Anatec Inc	L04865	Nederland	62	08/16/05
Throughout Tx	T C Inspection Inc	L05833	Oyster Creek	05	08/29/05
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	96	08/17/05
Throughout Tx	Midwest Inspection Services	L03120	Perryton	79	08/10/05
Throughout Tx	Intec	L05150	San Antonio	07	08/16/05
Throughout Tx	Apex Geoscience Inc	L04929	Tyler	19	08/11/05
Throughout Tx	Apex Geoscience Inc	L04929	Tyler	20	08/30/05
Tyler	Tyler Cardiovascular Consultants PA CVC	L05242	Tyler	09	08/11/05
Victoria	Victoria Heart & Vascular Center	L05748	Victoria	03	08/18/05
Victoria	Victoria of Texas LP DBA Detar Hospital Navarro	L01630	Victoria	41	08/23/05
Victoria	Equistar Chemicals LP	L04101	Victoria	17	08/30/05
Webster	Clear Lake Cardiology Associates PA	L05549	Webster	05	08/22/05
Wichita Falls	United Regional Health Care System Inc	L00350	Wichita Falls	98	08/13/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Dallas	Cardiology Consultants of Texas	L04997	Dallas	33	08/19/05
Odessa	Texas Oncology PA DBA West Texas Cancer Center	L04984	Odessa	01	08/15/05
Round Rock	Columbia/St Davids Healthcare System LP DBA Medical Center of Round Rock	L03469	Round Rock	38	08/16/05

CONTINUED RENEWALS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Tolunay Wong Engineers Inc	L04848	Houston	08	08/22/05
Throughout Tx	Geoscience Engineering & Testing Inc	L05180	Houston	06	08/22/05
Uvalde	Uvalde County Hospital Authority DBA Uvalde Memorial Hospital	L03327	Uvalde	14	08/18/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200504032
Randy Fritz
Chief Operating Officer
Department of State Health Services
Filed: September 13, 2005

Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688,
Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200504031
Randy Fritz
Chief Operating Officer
Department of State Health Services
Filed: September 13, 2005

Notice of Emergency Impoundment Order on GSD Trading USA, Inc.

Notice is hereby given that the Department of State Health Services (department) ordered that radioactive material subject to license under 25 TAC Chapter 289, excluding naturally occurring radioactive material possessed under a general radioactive material license, found at the GSD Trading USA, Inc. (unlicensed) facility located at 7135 South Lake Houston Parkway, Houston, Texas is hereby impounded and not transferred without written authorization by the department.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200504030
Randy Fritz
Chief Operating Officer
Department of State Health Services
Filed: September 13, 2005

Texas Department of Housing and Community Affairs

Request for Proposal for Bond Counsel

SUMMARY. The Texas Department of Housing and Community Affairs (TDHCA), through its Legal Services Division, is issuing a Request for Proposals (RFP) for outside Bond Counsel. Bond Counsel will provide legal services in connection with the issuance of TDHCA's bonds, notes, and other obligations of TDHCA to finance or refinance residential housing and multifamily housing developments and to refund prior bond issues. matters.

DEADLINE FOR SUBMISSION. The deadline for submission in response to the Request for Proposals is 4:00 p.m., Central Daylight Saving Time, October 7, 2005. No proposal received after the deadline will be considered.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposals in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Law firms interested in submitting a proposal should contact Mr. Kevin Hamby, General Counsel, at 512/475-3948, 507 Sabine, Suite 900, Austin, TX 78701 or visit our website at www.tdhca.state.tx.us, for

Notice of Emergency Impoundment Order on NUCOR Steel

Notice is hereby given that the Department of State Health Services (department) ordered that all radioactive devices containing cesium-137 found at the NUCOR Steel (Licensee--L02504) facility located at 8812 Highway 79 West, Jewett, Texas are hereby impounded and not transferred without written authorization by the department.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange

a complete copy of the RFP. Communication with any member of the board, the executive director, or TDHCA staff other than Mr. Hamby or his assistant, concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-200504026

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: September 13, 2005



Request for Proposal for Bond/Securities Disclosure Counsel

SUMMARY. The Texas Department of Housing and Community Affairs (TDHCA), through its Legal Services Division, is issuing a Request for Proposals (RFP) for outside Bond/Securities Disclosure Counsel. Bond/Securities Disclosure Counsel will provide legal services in connection with the issuance of TDHCA's bonds, notes, and other obligations of TDHCA to finance or refinance residential housing and multifamily housing developments and to refund prior bond issues.

DEADLINE FOR SUBMISSION. The deadline for submission in response to the Request for Proposals is 4:00 p.m., Central Daylight Saving Time, October 7, 2005. No proposal received after the deadline will be considered.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposals in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Law firms interested in submitting a proposal should contact Mr. Kevin Hamby, General Counsel, at 512/475-3948, 507 Sabine, Suite 900, Austin, TX 78701 or visit our website at www.tdhca.state.tx.us, for a complete copy of the RFP. Communication with any member of the board, the executive director, or TDHCA staff other than Mr. Hamby or his assistant, concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-200504027

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: September 13, 2005



Texas Higher Education Coordinating Board

Request for Proposals for the Texas Fund for Geography Education

This packet contains instructions and forms for submitting a proposal to the Texas Fund for Geography Grant Program. To be eligible for an award, institutions must submit applications to the Texas Fund for Geography Education Advisory Committee as specified in these instructions. Proposals must be submitted in writing and electronically.

Electronic copies of these instructions and forms may be found on the Texas Higher Education Coordinating Board's (Coordinating Board's) website at <http://www.theccb.state.tx.us/partnerships/teachprep.htm>

Name: Texas Fund for Geography Education

Purpose: To provide funding to eligible institutions of higher education to support geography education within the state and to improve geography literacy in the K-12 environment.

Authority: Texas Education Code, §§61.944 - 61.945; Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter J, Rules, §§13.180 - 13.187. See appendices.

Eligible Institutions: Public and independent institutions of higher education as defined in Texas Education Code, §61.003 shall be able to compete for grants.

Eligible Projects: New or existing initiatives designed to improve the quality of geography education in the Texas K-12 environment. Collaborative efforts between public/independent institutions of higher education in Texas and a K-12 partner. The latter may include, but not be limited to, school district(s), individual schools/teachers, regional education service center(s), and public and private entities.

General Selection Criteria: Competitive. Designed to award grants that provide the best overall value to the state. Selection criteria shall be based primarily on project quality, cost, and impact the project will have on enhancing geography education in the K-12 environment.

Available Funds: \$90,000 for Calendar Year 2006.

Grant Award: Minimum: None. Maximum: \$15,000.

Grant Period: One-year grants from January 1, 2006 to December 31, 2006.

Grant Disbursement: In a single payment, as soon as possible after the awards are made.

Carryover Funds: Unencumbered funds may not carry over beyond the grant period unless specifically authorized by the Coordinating Board's Program Director for Educator Preparation, Graduate and Professional Education, Academic Affairs and Research Division.

Application Deadline: Applications must be postmarked (or otherwise dated for overnight delivery) by November 4, 2005, or hand-delivered to the Coordinating Board's office by 5:00 p.m., November 4, 2005. Applications must also be received electronically by 5:00 p.m., November 4, 2005. E-mail applications to: susan.hetzler@theccb.state.tx.us.

More Information: Contact Dr. Susan Hetzler, Program Director for Educator Preparation, Graduate and Professional Education, Academic Affairs and Research Division, at (512) 427-6220, or by e-mail at: susan.hetzler@theccb.state.tx.us.

Program Schedule:

November 4, 2005: Proposals are due.

November 18, 2005: Proposals are reviewed by the Geography Education Advisory Committee.

December 1, 2005: Recommendations are made to the National Geographic Society.

January 4, 2006: Proposals are awarded by the National Geographic Society.

January 11, 2006: Award letters are sent.

January 18, 2006: Grantee(s) sign award contracts.

TRD-200504065

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Filed: September 14, 2005

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by ACCIDENT FUND GENERAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Lansing, Michigan.

Application for admission to the State of Texas by ACCIDENT FUND NATIONAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Lansing, Michigan.

Application for admission to the State of Texas by AGENTS TITLE INSURANCE COMPANY, INC., a foreign title company. The home office is in Longmont, Colorado.

Application for admission to the State of Texas by RESIDENCE MUTUAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Agoura Hills, California.

Application for admission to the State of Texas by UNITED GUARANTY COMMERCIAL INSURANCE COMPANY OF NORTH CAROLINA, a foreign fire and/or casualty company. The home office is in Greensboro, North Carolina.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200504070

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: September 14, 2005

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under §1501.312, Texas Insurance Code. A small employer health benefit plan issuer is defined by §1501.002(16), Texas Insurance Code, as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Subchapters C - H of Chapter 1501, Texas Insurance Code. A risk-assuming health benefit plan issuer is defined by §1501.301(4), Texas Insurance Code, as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Standard Security Life Insurance Company of New York

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Archie Clayton, 333 Guadalupe, Tower I, Room 860, Austin, Texas.

If you wish to comment on the application of Standard Security Life Insurance Company of New York to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200503983

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: September 9, 2005

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of THE J. P. FARLEY CORPORATION, INC., a foreign TPA. The home office is WESTLAKE, OHIO.

Application to change the name and home office of ANDERS, SMITH & ASSOCIATES, INC., DALLAS, TEXAS to ANDERS, SMITH & ASSOCIATES, LLP, a foreign TPA. The home office is WILMINGTON, DELAWARE.

Application to change the name of TEXAS PENSION CONSULTANTS, INC. (DBA TEXAS PENSION CONSULTANTS) to JULY BUSINESS SERVICES, INC. (DBA JULY BUSINESS SERVICES) a foreign TPA. The home office is WACO, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200504074

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: September 14, 2005

Texas Lottery Commission

Instant Game Number 603 "Set for Life"

1.0 Name and Style of Game.

A. The name of Instant Game No. 603 is "SET FOR LIFE". The play style is "key number match with auto win and/or multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 603 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 603.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, COIN SYMBOL, STAR SYMBOL, LIFE SYMBOL, \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200, \$500, \$1,000, \$2,500 and \$5,000/WK.

D. Play Symbol Caption- The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink

in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 603 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
COIN SYMBOL	AUTO
STAR SYMBOL	WINX10
LIFE SYMBOL	WIN
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$

\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$2,500	25 HUND
\$5,000/WK	5TH/WK

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 603 - 1.2E

CODE	PRIZE
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

I. High-Tier Prize- A prize of \$1,000, \$2,500 or \$5,000/WK (\$5,000 per week not to exceed \$5,000,000 total).

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (603), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 603-0000001-001.

L. Pack - A pack of "SET FOR LIFE" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket front 001 on the other side.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SET FOR LIFE" Instant Game No. 603 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SET FOR LIFE" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) play symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player will win prize shown for that number. If a player reveals a COIN SYMBOL, the player wins prize indicated automatically. If a player reveals a STAR SYMBOL, the player wins ten (10) times the prize shown. If the player reveals a LIFE play symbol, the player wins \$5,000 per week (not to exceed \$5,000,000 total). No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;
 4. Each of the Play Symbols must be printed in black ink except for dual image games;
 5. The ticket shall be intact;
 6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
 8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
 9. The ticket must not be counterfeit in whole or in part;
 10. The ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
 14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
 15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
 16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
 17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. No four or more like non-winning prize symbols on a ticket.
- C. No duplicate WINNING NUMBERS play symbols on a ticket.
- D. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.
- E. The STAR (win x 10) play symbol will only appear on intended winning tickets as dictated by the prize structure.
- F. The LIFE play symbol will only appear with the \$5,000/WK prize symbol and both symbols will only appear on the two winning tickets as dictated by the prize structure.
- G. Non-winning prize symbols will never be the same as the winning prize symbol(s).
- H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).
- I. Top prizes are to be approximately evenly distributed throughout the game.

2.3 Procedure for Claiming Prizes.

- A. To claim a "SET FOR LIFE" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100, \$200, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.
- B. To claim a "SET FOR LIFE" Instant Game prize of \$1,000 or \$2,500, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.
- C. As an alternative method of claiming a "SET FOR LIFE" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100, \$200, \$500, \$1,000 or \$2,500, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.
- D. When claiming a "SET FOR LIFE" Instant Game prize of \$5,000 per week, (not to exceed \$5,000,000 total), the claimant must choose one of the following four (4) payment options for receiving the prize:

1. Weekly via direct deposit to the winner's account. With this plan, upon validation of the prize, 52 weekly payments of \$5,000, less any taxes and/or other offsets or mandatory withholdings required by law, will be made each Wednesday up to \$260,000 per year. Additional payment(s) may be made to reach the total maximum payment of \$5,000,000. *NOTE: The investment is based on 52 weeks per year. Some years may have 53 weeks per year, however, only 52 weeks per year will be paid. On years with 53 weeks, no payment will be made on the last Wednesday in December.

2. Monthly via direct deposit to the winner's account. With this plan, upon validation of the prize, an initial payment of \$21,674 less any taxes and/or other offsets or mandatory withholdings required by law, will be made each year on the first business day of the month of the claim. A payment of \$21,666 less any taxes and/or other offsets or mandatory withholdings required by law, will be made on the first business day for the remaining eleven months of each year for a combined total of up to \$260,000 per year. Monthly payments will be made for a period 231 months with the final payment of \$16,660 less any taxes and/or other offsets or mandatory withholdings required by law, to reach the total maximum payment of \$5,000,000.

3. Quarterly via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$65,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made four times a year on the first business day of the first month of each calendar quarter (January, April, July, October) for a total of \$260,000 per year. Quarterly payments will be made for approximately 19 years for a total of 77 quarters with the final quarterly payment of \$60,000 less any taxes and/or other offsets or mandatory withholdings required by law, to reach the total maximum payment of \$5,000,000.

4. Annually via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$260,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made once a year on the first business day of the anniversary month of the claim. Annual payments will be made for a period of 19 years or a total of 19 annual payments. One additional payment of \$60,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made to reach the total maximum payment of \$5,000,000.

5. If a payment falls on a holiday or weekend, the payment will be made on the following business day.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "SET FOR LIFE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "SET FOR LIFE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 603. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 603 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	1,447,200	5.56
\$20	603,000	13.33
\$50	138,020	58.25
\$100	107,200	75.00
\$200	17,420	461.54
\$500	2,345	3,428.57
\$1,000	201	40,000.00
\$2,500	134	60,000.00
\$5K/WK/LIFE	2	4,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.47. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 603 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 603, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200504039
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 13, 2005

Texas State Board of Pharmacy

Election of Officers

The Texas State Board of Pharmacy announces the election of the following officers to serve from September 1, 2005 to August 31, 2006: W. Michael Brimberry, R.Ph., MBA, President; Kim A. Caldwell, R.Ph., Vice President; and W. Benjamin Fry, R.Ph., Treasurer.

TRD-200503933
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: September 7, 2005

Texas Board of Professional Engineers

Policy Advisory Stakeholder Request EAOR #12 - Professional Design of Indoor Antenna Systems

The Texas Board of Professional Engineers (Board) is given authority to issue advisory opinions under Subchapter M, Chapter 1001 of the Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act (Act) in regard to a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days.

Pursuant to that requirement, the Board hereby notifies potential stakeholders that it has received an advisory opinion request regarding indoor antenna systems. More specifically, the request asks for an opinion evaluating whether the design of these systems needs to be performed by a licensed professional engineer (engineer). Stakeholder input is required to inform the Board regarding the current state of the telephone/wireless industry and §1001.061 of the Act. Due to the nature of the request, we expect to have input from those agencies or companies that work on indoor antenna systems and others that may have interest in this topic. Building and code compliance officials are encouraged to provide input to the Board regarding antenna installations in new and existing buildings and other structures.

The Board has developed a stakeholder process to gather information from professional engineers, and consultants and other interested parties. The policy advisory will be written with consideration given to stakeholder comments. This notice is intended to generate a list of possible stakeholders and to initiate public comment. The Board plans to schedule a stakeholder meeting near the end of October 2005. Please let us know of any preferences you may have concerning the scheduling of the stakeholder meeting. All comments and stakeholder information should be directed to:

Texas Board of Professional Engineers

1917 IH 35 South
Austin, Texas 78741
Attention: Policy Advisory Staff
Or by E-mail to: peboard@tbpe.state.tx.us
TRD-200503999
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: September 12, 2005

Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (Commission) received an application on September 12, 2005, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Guadalupe Valley Communications Systems, LP for a State-Issued Certificate of Franchise Authority, Project Number 31626 before the Commission.

Applicant intends to provide cable and video service. The requested CFA service area includes portions of the City of Bulverde further identified as the subdivisions of Bulverde Hills, Saddleridge, Oakland Estates, and Windmill Ranch. The service area also includes portions of the unincorporated areas of Comal County including the subdivisions of Comal Trace, Berry Oaks, River Crossing, Mountain Springs Ranch, Waggener Ranch, Indian Hills, Cypress Lake Gardens, areas of Canyon Lake, Sattler and River Chase. The video service area also includes portions of the unincorporated areas of Bexar County including the subdivisions of Bulverde Village, Trinity Oaks, Cibolo Canyon, Lookout Canyon and portions of the unincorporated areas of Kendall County including the subdivisions of Tapatio Springs, Deep Hollow, Diamond Ridge, and Anagua Springs.

Information on the application may be obtained by contacting the Commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the Commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 31626.

TRD-200504035
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 13, 2005

Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (Commission) of an application filed on September 8, 2005, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (El Valle Homes). Docket Number 31599.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request from the N. O. Simmons of El Valle Homes requesting BPUB to provide electric utility service to a proposed subdivision. The property encompasses 128 acres of land. The estimated cost to BPUB to provide service to this proposed area is \$1,560,000.00. There are no electric distribution facilities within the 128 acres of land. If the application is granted, the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Commission no later than October 3, 2005, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31599.

TRD-200504024
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 13, 2005

Sul Ross State University

Request for Proposals

Pursuant to Texas Government Code, Article 2254, Sul Ross State University, a member of the Texas State University System, announces the solicitation for consultant services to advise and assist with the management and administration of a GEAR UP Grant.

Project Summary: Sul Ross State University has received a federally funded GEAR UP grant. The university's GEAR UP program will serve 665 7th graders from fall 2005 through a summer college bridge program following high school graduation in 2011. The project will develop individual education plans for each targeted student to identify students' unique needs and specify services to meet those needs. Tutoring, after-school programs of academic success skills and field trips to historical and cultural sites, annual week-long summer programs of intensive instruction, college and financial aid workshops and individual college counseling sessions, mentoring, and 21st century scholar events are designed to meet their needs. A broad-based faculty development program of workshops and supporting self-study will address effective instructional techniques. The successful vendor will share in the responsibility for assurance of the attainment of the grant objectives, compliance with the terms and conditions of the grant and will provide services such as assistance in budget management, consultations, performance reporting, and review and editing of reports. Similar services have previously been provided by a consultant. Sul Ross State University intends to award the contract for the consulting services to a previously used consultant unless a better offer is received.

In accordance with the provisions of V.C.T.A. Government Code Sec. 2254.028 (c), the president of Sul Ross State University has approved the use of a private consultant and has determined that the required fact exists.

Proposals are to be received no later than 4:45 p.m., Friday, October 7, 2005. A copy of the request for proposal packet is available upon request from Patty Roach, Director of Purchasing, Sul Ross State University, P.O. Box C-116, Alpine, Texas 79832, phone (432) 837-8045, fax (432) 837-8046.

Vendors will be evaluated on credentials for the work to be done, previous successful experience on similar grant projects and interpersonal and written communication skills. Proposals will be evaluated on the fulfillment of the requirements as outlined in the specifications, a fee schedule which is appropriate to the proposed activities, and the quality of performance on previous contracts or experience on similar projects.

The University reserves the right to reject any and all proposals received if it is determined to be in the best interest of the University. All material submitted in response to this request becomes the property of the University and may be reviewed by other vendors after the official review of the proposals.

TRD-200504068
Patty Roach
Director of Purchasing
Sul Ross State University
Filed: September 14, 2005

Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Athens, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: The City of Athens, Athens Municipal Airport. TxDOT CSJ No. 0610ATHNS. Scope: Provide engineering/design services for the CIP to rehabilitate apron; rehabilitate and mark Runway 17-35 and parallel & cross taxiways; and engineering/design/construction services for the construction of a twelve unit T-hangar pre-engineered metal building system with associated appurtenances, hangar access and taxiway paving at the Athens Municipal Airport.

The **DBE** goal is set for the design project at **0%**. The DBE goal is set for the hangar project at **0%**. TxDOT Project Managers are John Wepryk, P.E., for the design project and Megan Caffall for the hangar project.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Athens".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To**

ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Six completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight October 18, 2005 (CDT). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on October 19, 1005 (CDT). Overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 p.m. October 19, 2005 (CDT). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of Aviation Division staff members, one local government personnel and two local government observers. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager at 512-416-4517, or for technical questions contact, Project Manager, John Wepryk, P.E., for the design project and Megan Caffall for the hangar project at 1-800-68-PILOT (74568).

TRD-200504059
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 14, 2005

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Beeville, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Beeville, Beeville Municipal Airport. TxDOT CSJ No. 0616BEVLE. Scope: Provide engineering/design services to replace rotating beacon and tower; replace MIRL Runway 12-30. Future items may include engineering design services to construct stub taxiway; expand apron; rehabilitate and mark partial parallel taxiway for Runway 12-30; rehabilitate Runway 12-30, apron, turnaround Runway 30 end and hangar access taxiways; and mark Runway 12-30 at the Beeville Municipal Airport.

The **HUB** goal is set at **0%**. TxDOT Project Manager is John Wepryk, P.E.

To assist in your proposal preparation, the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Beeville Municipal Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Five completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight October 20, 2005 (CDT). Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on October 21, 2005 (CDT). Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 p.m. October 21, 2005 (CDT). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms, if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or John Wepryk, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200504060
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 14, 2005

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Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Castroville, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Castroville, Castroville Municipal Airport.
TxDOT CSJ No. 0615CASTR. Scope: Provide engineering/design

services to relocate county road; rehabilitate and mark hangar access taxiway; rehabilitate and mark parallel taxiway; rehabilitate and mark stub taxiway; rehabilitate Runway 15-33; rehabilitate apron; extend MIRL Runway 15 end; extend Runway 15 end; extend and mark parallel taxiway to Runway 15 end; mark Runway 15-33; reconstruct hangar access taxiways; install PAPI-2 Runway 15-33; and install fence and install erosion/sedimentation controls at the Castroville Municipal Airport.

The **HUB** goal is set at **0%**. TxDOT Project Manager is Harry Lorton, P.E.

To assist in your proposal preparation, the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Castroville Municipal Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Six completed, unfolded copies of Form AVN 550 must be postmarked by U. S. Mail by midnight October 20, 2005 (CDT). Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on October 21, 2005 (CDT). Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 p.m. October 21, 2005 (CDT). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of Aviation Division staff members and one local government personnel with one local government observer. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms, if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Harry Lorton, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200504061

Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 14, 2005



Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Gladewater, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Gladewater, Gladewater Municipal Airport. TxDOT CSJ No. 0610GLADE. Scope: Provide engineering/design services to construct new terminal apron and new hangar access taxiway; construct taxiway from Runway 32 to Runway 35; rehabilitate and mark Runway 14-32 and Runway 17-35; rehabilitate apron, taxiways to Runway 14-32 and Runway 17-35 and hangar access taxiways; and clear obstructions at the Gladewater Municipal Airport.

The **DBE** goal is set at **6%**. TxDOT Project Manager is John Wepryk, P.E.

To assist in your proposal preparation, the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Gladewater".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Nine completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight October 20, 2005 (CDT). Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on October 21, 2005 (CDT). Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 p.m. October 21, 2005 (CDT). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee

will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or John Wepryk, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200504062
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 14, 2005



Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Sulphur Springs, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: The City of Sulphur Springs, Sulphur Springs Municipal Airport. TxDOT CSJ No. 0610SULPH. Scope: Provide engineering/design services for the CIP to reconstruct or overlay northern 1,600 feet of Runway 18 and northern 2,000 feet of Taxiway "A"; rehabilitate and mark Runway 18-36 and parallel & cross Taxiways A-F; rehabilitate hangar access taxiways, terminal apron and north apron; install PAPI-4 Runway 18-36; install REIL Runway 36; replace MIRL and sign panels; and temporary displaced threshold and drainage improvements and engineering/design/construction services for the construction of six box hangar pre-engineered metal building systems with associated appurtenances, hangar access and taxiway paving at the Sulphur Springs Municipal Airport.

The **DBE** goal is set for the design project at **6%**. The DBE goal is set for the hangar project at **0%**. TxDOT Project Managers are John Wepryk, P.E. for the design project and Megan Caffall for the hangar project.

To assist in your proposal preparation, the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Sulphur Springs".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION:** To ensure utilization of the latest

version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Six completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight October 18, 2005 (CDT). Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on October 19, 1005 (CDT). Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 p.m. October 19, 2005 (CDT). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager at 512-416-4517, or for technical questions contact, Project Manager, John Wepryk, P.E. for the design project and Megan Caffall for the hangar project at 1-800-68-PILOT (74568).

TRD-200504063

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: September 14, 2005



Aviation Division - Request for Proposal for Aviation Engineering Services

The County of Wood, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: Wood County, Wood County Airport. TxDOT CSJ No. 0610MNOLA. Scope: Provide engineering/design services to construct partial parallel and cross taxiway; rehabilitate Runway 18-36, apron, taxiway and hangar access taxiway; mark runway 18-36; install culverts in hangar area; install exit and hold signs; and erosion/sedimentation controls.

The **HUB** goal is set at **7%**. TxDOT Project Manager is John Wepryk, P.E.

To assist in your proposal preparation, the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Wood County".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The

form may be emailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Seven completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight October 26, 2005 (CDT). Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on October 27, 2005 (CDT). Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 p.m. October 27, 2005 (CDT). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or John Wepryk, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200504064

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: September 14, 2005



Aviation Division - Request for Proposal for Professional Services

The City of Athens, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: City of Athens, Athens Municipal Airport. TxDOT CSJ No. 0610ATHEN. Scope: Prepare an Airport Development Plan which includes, but is not limited to, information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to development, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Development Plan should be tailored to the individual needs of the airport.

The DBE goal is set at 0%. TxDOT Project Manager is Linda Howard.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn551.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is an MS Word Template.

Six completed, unfolded copies of Form AVN-551 must be postmarked by U. S. Mail by midnight **October 18, 2005** (CDT). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 P.M., **October 19, 2005** (CDT). Overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 P.M. **October 19, 2005** (CDT). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Please mark the envelope of the forms to the attention of Amy Slaughter. Electronic facsimiles or forms sent by email will not be accepted.

The consultant selection committee will be composed of Aviation Division staff members, one local government member and two local government observers. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating planning proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Linda Howard, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200504058

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: September 14, 2005

The University of Texas System

Notice on Entering into Major Consulting Services Contract

The University of Texas System ("University"), in accordance with the provisions of *Texas Government Code*, Chapter 2254, has amended a Consultant Contract with Paul Youngdale, Jr. ("Consultant"), for consulting services more particularly described in the Invitation for Proposals for Consulting Services (the "Invitation"), published in the *Texas Register* on August 5, 2005 (30 TexReg 4515).

Project Description:

Consultant previously provided advice and assistance to U. T. System institutions regarding planned giving from April 1, 2005 through August 31, 2005. In accordance with an Invitation and Consultant's response, Consultant will continue to provide University and its fifteen institutions with training and guidance for development professionals to provide additional resources to meet the educational needs of University through gifts, donations, and bequests. This includes being available to the development staff at U. T. System institutions to answer planned giving questions, provide training, accompany gift officers on visits with donors, and assist with other planned giving opportunities.

Name and Address of Consultant:

Paul J. Youngdale, Jr.

1610 Gaston Avenue

Austin, Texas 78703

Consultant's Previous Employment with University:

Consultant was previously employed by University for 23 years to provide advice and assistance regarding planned giving to development professionals at U. T. System institutions. His employment ended on June 9, 2004 and his annual rate of compensation was \$123,975 at the time of termination of employment.

Total Value of the Contract:

The current Amendment to the Contract increases the cumulative amount of payments remitted by University to Consultant for services and increases the reimbursement from U. T. System institutions to Consultant for expenses and disbursements related to the Contract. The cumulative amount of service fees shall not exceed \$34,000 ("Fee Cap"), and total reimbursement for reasonable expenses and disbursements shall not exceed \$30,000 ("Expense Cap"). The Fee Cap to be paid by University and the Expense Cap to be paid by U. T. System institutions is collectively referred to as the "Contract Amount." The Contract Amount shall not exceed \$64,000.

Contract Dates:

The First Amendment to the Contract was executed by Consultant on August 31, 2005, and by University on September 2, 2005, effective September 1, 2005. The Original Contract was executed by Consultant on April 29, 2005, and by University on April 28, 2005, effective April 1, 2005.

Questions:

Questions concerning this notice of amendment should be directed to Vice Chancellor Randa S. Safady, The University of Texas System Administration, 210 West Sixth Street, Suite 1.200, Austin, Texas 78701, (512) 499-4777, rsafady@utsystem.edu.

TRD-200503964

Francie A. Frederick

Counsel and Secretary to the Board

The University of Texas System

Filed: September 8, 2005

Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

East Cedar Creek Fresh Water Supply District, P.O. Box 309, Mabank, Texas 75147, received July 7, 2005, application for financial assistance in the amount of \$730,000 from the Drinking Water State Revolving Fund.

Falls County Water Control and Improvement District No. 1, P.O. Box 263, Marlin, Texas 76661, received August 9, 2005, application for financial assistance in an amount not to exceed \$400,000 from the Water Loan Assistance Fund.

City of Nacogdoches, P.O. Drawer 630648, Nacogdoches, Texas 75963-0648, received July 28, 2005, application for financial assistance in the amount of \$11,520,000 from the Drinking Water State Revolving Fund.

City of Groves, 3947 Lincoln Avenue, Groves, Texas 77619, received May 31, 2005, application for financial assistance in the amount of \$5,000,000 from the Clean Water State Revolving Fund.

TRD-200503948

Jonathan Steinberg

Deputy Counsel

Texas Water Development Board

Filed: September 8, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to move the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).